



REGULAR MEETING OF THE SAN MARCOS PLANNING AND ZONING COMMISSION

Tuesday, July 27, 2010, 6:00 p.m.
Council Chambers, City Hall
630 E. Hopkins Street

Sherwood Bishop, Chair
Bill Taylor, Vice-Chair
Randy Bryan, Commissioner
Bucky Couch, Commissioner
Jude Prather, Commissioner
Curtis O. Seebeck, Commissioner
Jim Stark, Commissioner
Chris Wood, Commissioner
Travis Kelsey, Commissioner

AGENDA

1. Call to Order.
2. Roll Call.
3. Chairperson's Opening Remarks.
4. ***NOTE:*** *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session;*
5. Citizen Comment Period.
6. **CUP-10-17.** Hold a public hearing and consider possible action on a request by Joe Flanagan, on behalf of Bar Entertainment, Inc DBA Nephews, for a Conditional Use Permit to allow an amendment for the addition of an exterior seating area to an existing Unrestricted CUP for on-premise consumption of mixed beverages at 100 N Guadalupe St.
7. **PC-10-11(03).** Consider possible action on a request by Byrn & Associates, Inc., agent for Breckenridge Properties and 90 San Marcos Ltd & DRFM Investments for approval of the final plat of Aspen Heights, being 21.31 acres, more or less, in the J.M. Veramendi Survey No. 2, Abstract No. 17, located approximately 600 ft northwest of the 1900 Block of North IH-35.
8. **PVC-10-03.** Hold a public hearing and consider a request by Hermann Vigil, on behalf of Vince Wood and Rob Haug, for a variance to Chapter 7.4.1.2 of the Land Development Code requiring all subdivisions with 75 or more lots to have at least two points of vehicular access for an approximately 235 acre tract out of the T.J. Chambers, E. Burleson, R. Clever, and E. Clark Surveys.

9. Hold a public hearing and consider a request by Carma Paso Robles, LLC for the following:

- a. **PDA-08-03.** A petition for development agreement for the entire site that addresses annexation, utility services, transportation, development standards, parkland and other project amenities accompanied with duties and responsibilities of the Developer, City and Property Owners Association over the term of the Development Agreement.
 - b. **LUA-08-12.** Future Land Use Map Amendment from High Density Residential (HDR), OS (Open Space), I (Industrial) to C (Commercial). The subject area includes 60.3 acres and is located east of Hunter Road and south of Centerpoint Road.
 - c. **PDD-08-05.** Zoning Change from FD (Future Development) and UZ (Unzoned) to a PDD (Planned Development District) with the underlying base zoning for the PDD to be Mixed Use and General Commercial. Subject area includes 1338.5 acres, Area 1 located at the terminus of Centerpoint Road and Hunter Road, Area 2 located east of Hunter Road and south of Centerpoint Road.
 - d. **ZC-08-20.** Zoning Change from Future Development (FD)/ Unzoned (UZ) to a base zoning category with the PDD zoning classification of MU (Mixed Use) for 1278.29 acres located at the terminus of Centerpoint Road and Hunter Road.
 - e. **ZC-08-21.** Zoning Change from Future Development (FD)/ Unzoned (UZ) to a base zoning category with the PDD zoning classification of General Commercial (GC) for 60.3 acres located east of Hunter Road and south of Center point Road.
- 10. LUA-10-08.** Hold a public hearing and consider possible action on a request by Vincent Gerard & Assoc. Inc, for a Future Land Use Map Amendment from Low Density Residential (LDR) to High Density Residential (HDR) being approximately 0.360 acres, located at 1028 Chestnut Street.
- 11. ZC-10-11.** Hold a public hearing and consider possible action on a request by Vincent Gerard & Assoc. Inc, for a Zoning Change from SF-6 (Single Family) to Multi-Family (MF-24) being approximately 0.721 acres, located at 1028 Chestnut Street.
- 12.** Hold a public hearing and consider possible action on amending the land use matrix to add a classification for charitable gaming facilities and to define this use in Chapter 8 of the Land Development Code.
- 13.** Hold a public hearing and consider action on amending the Land Development Code to include a provision establishing a new Section 4.2.2.9 entitled San Marcos SmartCode and Transect Zones.
- 14.** Hold a public hearing and consider action on a future land use map amendment for an area generally bounded by Concho Street, Lindsey Street, Moore Street, Comanche Street, Fredericksburg, Hull Street, IH-35, McKee and CM Allen from Mixed Use, Open Space, Industrial, Public and Institutional, Heavy Commercial, Neighborhood Commercial, Commercial, High Density Residential, Medium Density Residential, and Low Density Residential to G4(Growth Area 4),O1(Open Space 1), or O2(Open Space 2).
- 15.** Hold a public hearing and consider action on a zoning change for an area generally bounded by Concho Street, Lindsey Street, Moore Street, Comanche Street, Fredericksburg, Hull Street, IH-35, McKie and CM Allen from GC (General Commercial), MF-18 (Multi-Family), MF-24 (Multi-Family), NC (Neighborhood Commercial), MU (Mixed Use), CC (Community Commercial), OP (Office Professional), CBA (Central Business Area), P (Public and Institutional), TH (Townhomes), SF-6 (Single Family Residential), SF-4.5 (Single Family Residential), HC (Heavy Commercial) to T4 (Transect 4), T5 (Transect 5), or CS (Civic Space).

16. Hold a public hearing and consider an amendment to the Transportation Master Plan to include the extension of Leah Street, the deletion of CR110 and the adoption of the ITE Context Sensitive Solutions Manual to the Thoroughfare Plan.

17. Discussion Items.

Commission members and staff may discuss and report on items related to the Commission's general duties and responsibilities. The Commission may not take any vote or other action on any item other than to obtain a consensus regarding items that will be placed on future agendas for formal action.

Planning Report

Commissioners' Report.

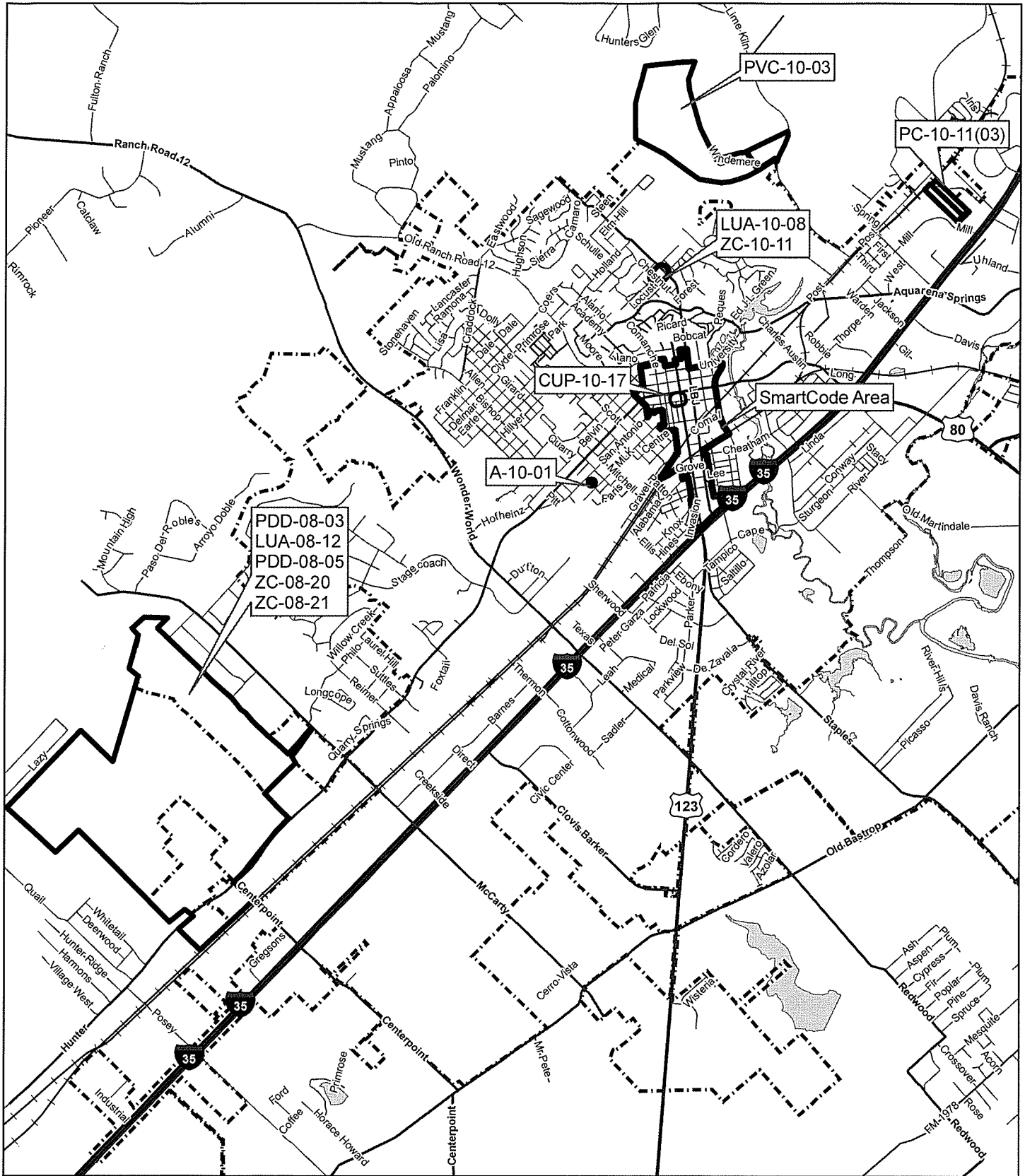
18. Consider approval of the minutes from the Regular Meeting on July 13, 2010.

19. Questions from the Press and Public.

20. Adjourn.

Notice of Assistance at the Public Meetings:

The San Marcos City Hall is wheelchair accessible. The entry ramp is located in the front of the building. Accessible parking spaces are also available in that area. Sign interpretative for meetings must be made 48 hours in advance of the meeting. Call the City Clerk's Office at 512-393-8090.

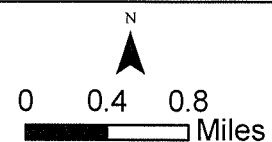


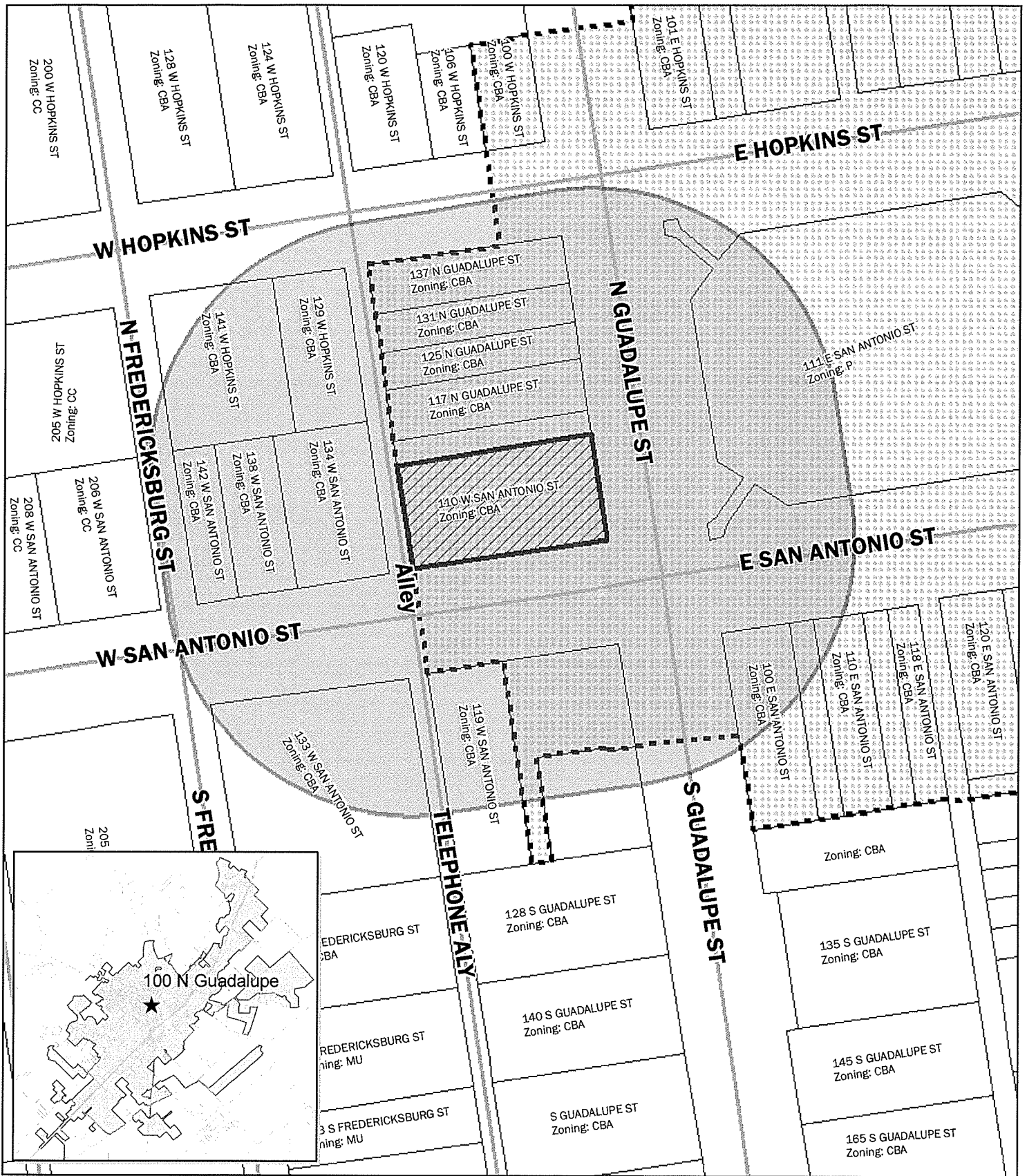
Location Map July 27, 2010

City of San Marcos
Development Services-Planning

Created By: John Foreman
Date: July 23, 2010

Map is not of survey quality. No warranty
is assumed or implied.





CUP-10-17
100 N Guadalupe
Map Date: 07/16/10

-  Notification Buffer (200 feet)
-  Site Location
-  Historic District

This map was created by Development Services for reference purposes only. No warranty is made concerning the map's accuracy or completeness.



Unrestricted Conditional Use Permit

CUP-10-17

Nephews



Applicant Information:

Applicant: Joe Flanagan
100 N Guadalupe
San Marcos TX 78666

Property Owner: Charles Ramsey
PO Box 2319
San Marcos TX 78666

Applicant Request: Modification to an existing Unrestricted Conditional Use Permit (CUP) for on-premise consumption of mixed beverages to allow the addition of a patio.

Notification: Public hearing notification mailed on July 16, 2010. A list of property owners notified is attached.

Response: One letter of opposition as of July 22, 2010

Subject Property:

Location: 100 N. Guadalupe

Legal Description: Original Town of San Marcos Block 11, Lot 2

Frontage On: Guadalupe, San Antonio

Neighborhood: Downtown

Existing Zoning: CBA

Master Plan Land Use: Commercial

Sector: Sector 8

Existing Utilities: Adequate

Existing Use of Property: Bar

Proposed Use of Property: Bar

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	CBA	Commercial
S of Property	CBA	Commercial
E of Property	CBA	Commercial
W of Property	CBA	Commercial

Code Requirements:

A conditional use permit allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

Case Summary

Nephews holds one of the fourteen Unrestricted CUPs in the CBA. The business has used the outdoor area as a patio surrounded by a temporary fence without a permit prior to being stopped by the police. The applicant is proposing a permanent patio. The application states that the business will have live music and a DJ, but it does not specify whether music will be inside only or on the new patio. Hours are from 8 p.m. to 2 a.m. The outdoor area is proposed to have 30 seats.

Comments from Other Departments:

Engineering and Health have not reported major concerns regarding the subject property. Police stated concerns about the safety of the temporary patio and provided a list of incidents at the location in the last year. The Fire Marshal's office stated that the addition could push the occupancy over 500, requiring sprinklers and an alarm, and that professionally sealed plans will be required. The Building Department stated that the business had applied for a Certificate of Occupancy for the patio and had an inspection, but had not submitted plans.

Planning Department Analysis:

In addition to the building-related issues, the addition of floor area is a significant change in the business that requires revision to the CUP. The site plan submitted by the applicant is not sealed by an architect or engineer and is not sufficient for permitting. It does not indicate where any stage or speakers would be for live music. There appears to have been site work including repaving and fencing, but no permits were found. Staff has made numerous attempts but has been unable to contact the applicant for further information. Considering other departments' concerns regarding occupancy numbers, safety, and building requirements, and the uncertainty regarding live music, staff is recommending postponement to allow the applicant time to submit plans and more information.

Staff provides this request to the Commission for your consideration and recommends postponement of the Conditional Use Permit until the August 24th meeting.

Planning Department Recommendation:	
	Approve as submitted
	Approve with conditions or revisions as noted
X	Alternative
	Denial

The Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

John Foreman	Planner	July 22, 2010
Name	Title	Date



1 SQUARE = 2 FEET

DOORWAY
INTO
ZOOI ADDITION
AREA

DOORWAY
INTO
DANCE FLOOR
AREA

AREA
ABOVE BROKEN
LINE
SAME AS
EXISTING
CUP

BAR
AREA

OUTSIDE
STORAGE

FENCE

RETAINING
WALL / BENCH
SEAT

FLOWER
BED

PICNIC
TABLE

BACK
WALL
OF
NEIGHBORS
BUILDING

NEIGHBORS

PARKING

AREA

AREA

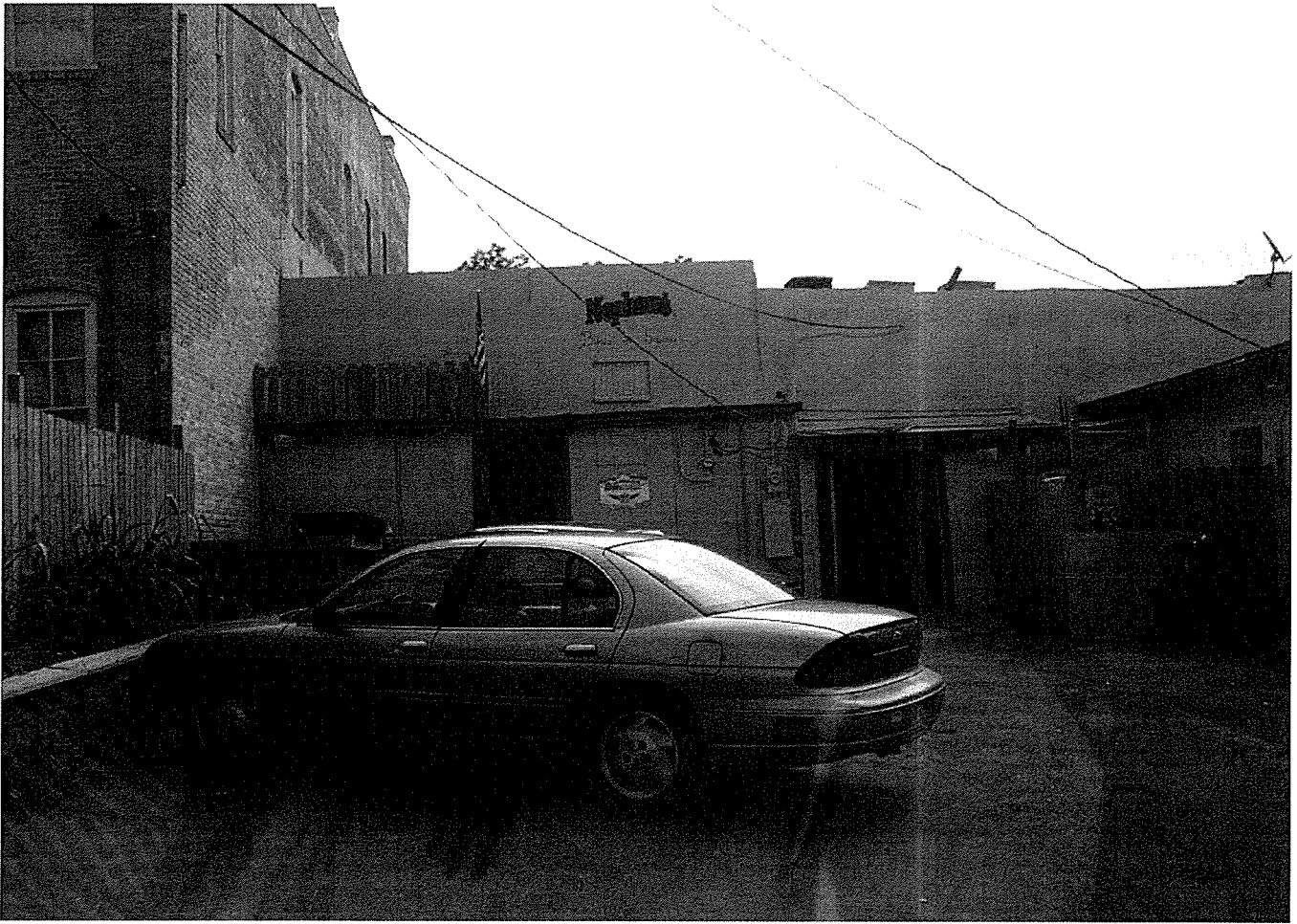
TEMPORARY FENCE

GAP IN FENCE

42

TO

BACK
ALLEY



7-19-10

Development Service-Planning

City of San Marcos

630 E. Hopkins

San Marcos, Texas 78666

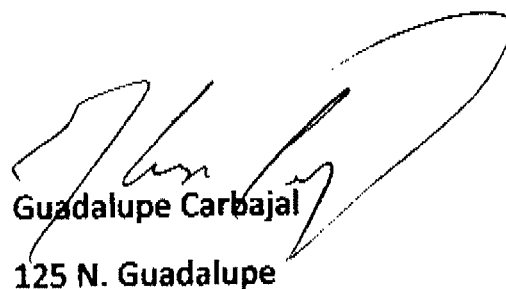
2010 JUL 19 AM 11:36
DEVELOPMENT SERVICES
CITY OF SAN MARCOS

Reference: CUP-10-17- Nephews

As a property owner three doors up from Nephew's: I oppose the exterior seating addition.

I have apartments on my property (125 N. Guadalupe) and the noise until 2:00 am will affect the tenants. The alley way is already too congested and this will lead to more traffic and noise.

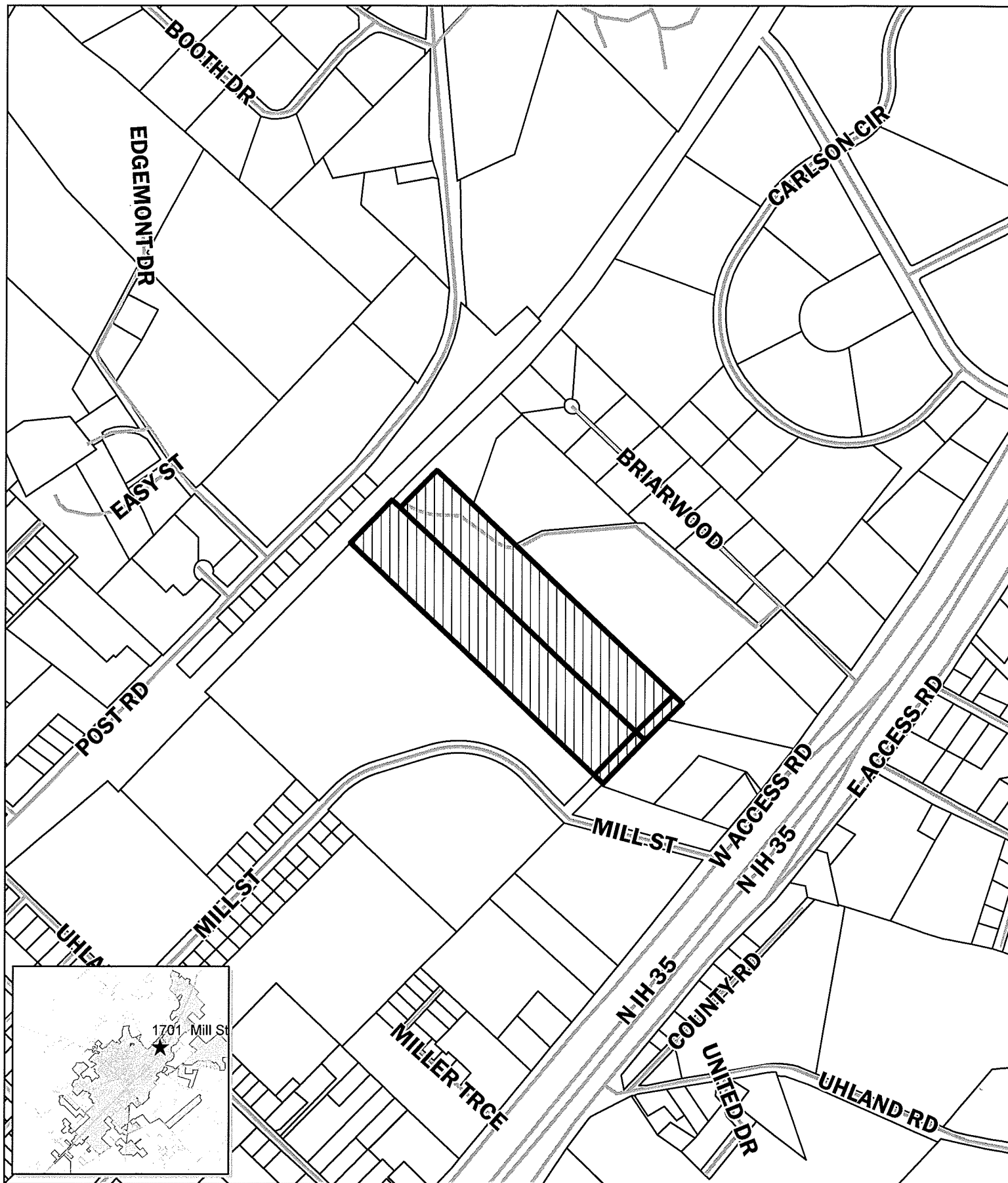
Thanks for your consideration.




Guadalupe Carbajal
125 N. Guadalupe

San Marcos, Texas 78666

(512)392-2438



PC-10-11(03)
Aspen Heights
Map Date: 7/22/10

 Notification Buffer
 (200 feet)

 Site Location

 Historic District

This map was created by Development Services
 for reference purposes only. No warranty is made
 concerning the map's accuracy or completeness.

0 265 530 1,060
 Feet



PC-10-11(03) Aspen Heights Final Plat



Applicant Information:

Applicant:

Breckenridge Properties
7004 Bee Caves Bldg. 3, Suite 330
Austin, TX 78746

Property Owner:

90 San Marcos Ltd & DRFM Investments
Tony Kalantari Majid Hemmasi
1124 Rutland Dr 6700 Guadalupe St
Austin, TX 78752 Austin, TX 78752

Applicant's Agent:

David C. Williamson, R.P.L.S
Byrn & Associates, Inc.
1115 Hwy 80
San Marcos, TX 78666

Notification:

Notification not required

Type & Name of Subdivision:

Final Plat, Aspen Heights

Subject Property:

Summary:

The subject property is located in the northwest quadrant of San Marcos; between the Missouri Pacific Railroad and IH-35, approximately 600 west of North IH-35. This final plat will establish Aspen Heights which will be composed of one lot containing 20.55 acres. This subdivision is Phase 2 of the 90 San Marcos concept plan and is the proposed site of a student housing complex which will be composed of 37 homes with four bedrooms; 34 duplex units with two bedrooms; and 54 duplex units with three bedrooms.

Traffic / Transportation:

The owner will grant R-O-W and construct the roadway extension of Copper Beech Drive for approximately 550 feet, terminating into a temporary turn-around on the adjacent tract.

Utility Capacity:

The City of San Marcos will provide water and wastewater service to the site, through transmission and distribution facilities located within the 60 ft R-O-W of Copper Beech Drive constructed by at developer.

Zoning:

MF-12 (Multi-Family Residential) zoning was approved by the Planning & Zoning Commission on July 13th and will go before the City Council for consideration on August 3rd & 17th.

Surrounding Zoning and Land use:

	Current Zoning	Existing Land Use
N of Property	Unzoned & MF-12	Single-Family Undeveloped
W of Property	MF-12 & MF-24	Medium & High Density Residential
S of Property	MF-12	Medium Density Residential
E of Property	GC	Commercial

Planning Department Analysis:

This final plat is subject to all requirements of the Land Development Code and has been reviewed for consistency with existing City Ordinances and policies.

The City of San Marcos Environment & Engineering Department has:

- Approved the Traffic Impact Analysis
- Approved the Watershed Protection Plan Phase 2
- Declared the submitted Public Improvement Construction Plans (PICP) substantially complete.

The Land Development Code requires Copper Beech Drive either be a through street or for the developer to provide a turn-around (cud-de-sac or hammerhead) at the stubbed out end. The area where the turn-around should be constructed is the site of a proposed drainage pond.

The owner of this proposed subdivision also owns the adjacent property to the north and is proposing to provide a temporary turn-around on the adjacent property by a separate instrument. The construction of the temporary turn-around is part of the PICP submitted by the developer, and will either be built or fiscal security will be posted by the developer prior to the recordation of the plat.

Staff is recommending **approval** of this final plat with the following condition:

1. A separate instrument dedicating the required temporary turn-around be recorded prior to the recordation of this plat.

Planning Department Recommendation	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

The Commission's Responsibility:

The City Charter delegates all subdivision platting authority to the Planning and Zoning Commission. The Commission's decision on platting matters is final and may not be appealed to

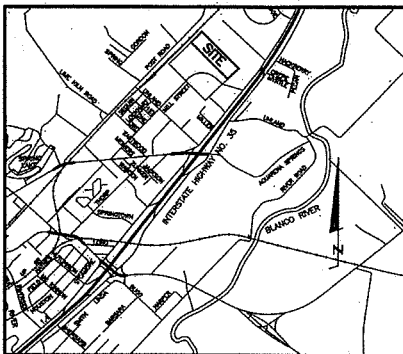
the City Council. Your options are to approve, disapprove, or to statutorily deny (an action that keeps the applicant "in process") the plat.

List of Attachments:

Maps
Proposed Plat

Prepared by:

Phil Steed, Planner



VICINITY MAP - NOT TO SCALE

SURVEYORS NOTES

1. FENCES MEANDER.
2. BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
3. ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48029C0393F, DATED SEPTEMBER 2, 2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
4. THIS SUBDIVISION LIES WITHIN THE SAN MARCOS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
5. THIS TRACT LIES WITHIN THE CITY LIMITS OF SAN MARCOS, TEXAS.
6. A SIDEWALK IS REQUIRED ON THIS LOT. THE SIDEWALK IS TO BE CONSTRUCTED CONCURRENTLY WITH STREET CONSTRUCTION.
7. THE BEARING BASIS FOR THIS SURVEY IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, AND REFERS TO GRID NORTH.

LEGEND

- VOL PG HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
 VOL PG HAYS COUNTY PLAT RECORDS
 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
 1/2" IRON ROD FOUND OR DIAMETER NOTED
 1/2" IRON PIPE FOUND OR DIAMETER NOTED
 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
 COTTON SPINDLE SET
 FENCE POST
 CALCULATED POINT
 CONCRETE NAIL SET
 CONCRETE MONUMENT FOUND
 P.U.E. PUBLIC UTILITY EASEMENT

BRECKENRIDGE GROUP SAN MARCOS, LP, THE OWNER OF THE LAND SHOWN ON THIS PLAT, AND DESIGNATED AS ASPEN HEIGHTS, HAYS COUNTY, TEXAS, SUBDIVIDE THIS PROPERTY AND DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS AND PUBLIC PLACES SHOWN ON THIS PLAT.

GREG HENRY

BRECKENRIDGE GROUP SAN MARCOS, LP
7004 BEE CAVE RD., BLDG. 3, SUITE 330
AUSTIN, TX. 78746

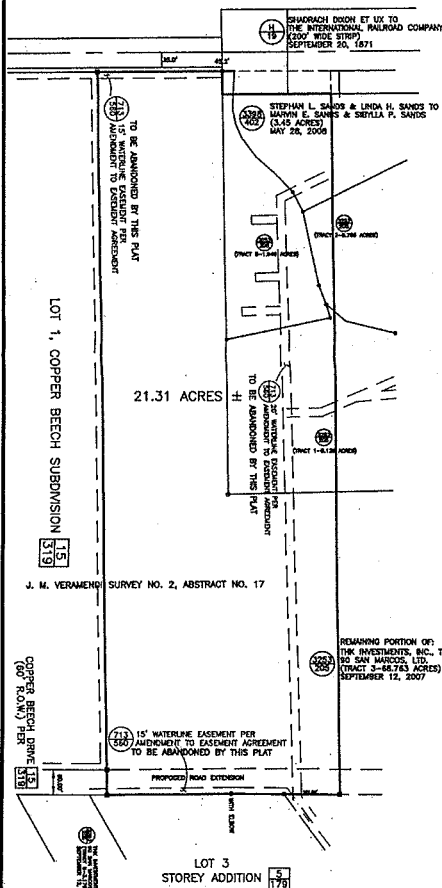
THIS SUBDIVISION PLAT WAS ACKNOWLEDGED BEFORE ME ON

_____, 20____ BY _____

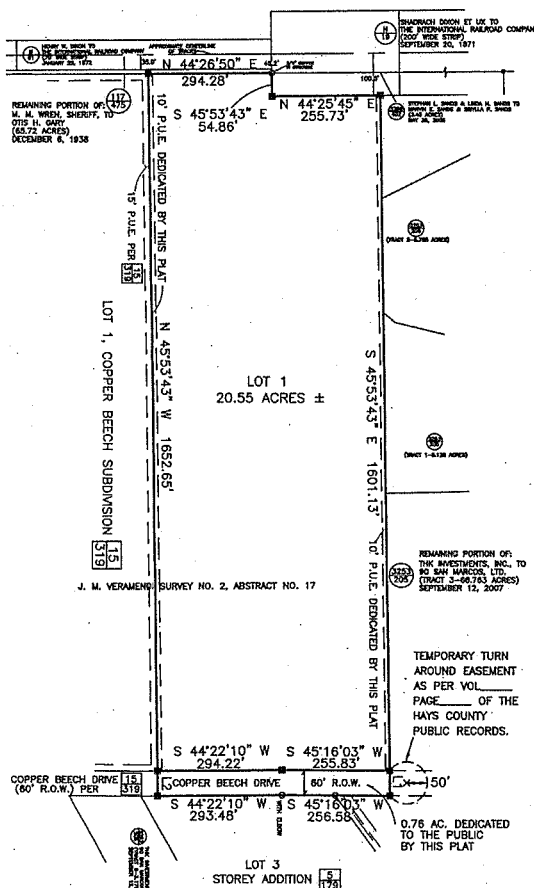
IN AND FOR _____ COUNTY, _____ NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

ORIGINAL SCALE
1" = 200'



EXISTING TRACT CONFIGURATION
SHOWING 21.31 ACRES IN THE J. M. VERAMENDI SURVEY NO. 2, A-17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS



LINE	BEARING	DISTANCE
L1	S 45°53'43" E	60.01'
L2	N 45°53'43" W	60.00'

SUBDIVISION PLAT
ESTABLISHING ASPEN HEIGHTS, BEING 21.31 ACRES ± IN THE J. M. VERAMENDI SURVEY NO. 2, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

CITY OF SAN MARCOS *
CERTIFICATE OF APPROVAL*

APPROVED AND AUTHORIZED TO BE RECORDED ON THE _____ DAY OF _____, 20____ BY THE PLANNING & ZONING COMMISSION OF THE CITY OF SAN MARCOS.

SHERWOOD BISHOP, CHAIRMAN
PLANNING & ZONING COMMISSION

FRANCIS SERNA
RECORDING SECRETARY

APPROVED:

CHARLES D. SWALLOW
DIRECTOR DEVELOPMENT SERVICES

DATE

STATE OF TEXAS *
COUNTY OF HAYS *

I, LINDA FRITSCH, COUNTY CLERK OF HAYS COUNTY, TEXAS, CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 20____ AT _____ O'CLOCK _____ M., AND RECORDED ON THE _____ DAY OF _____, 20____ AT _____ O'CLOCK _____ M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN BOOK _____, AT PAGE _____.

LINDA FRITSCH
COUNTY CLERK
HAYS COUNTY, TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THAT I, DAVID C. WILLIAMSON, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON AS "SET" WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF SAN MARCOS.

REGISTERED PROFESSIONAL LAND SURVEYOR
DAVID C. WILLIAMSON, R.P.L.S. NO. 4190

STATE OF TEXAS *
COUNTY OF HAYS *

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED _____, REGISTERED PUBLIC LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATIONS THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ DAY OF _____, 20____

FINAL PLAT

ASPEN HEIGHTS

BEING 21.31 ACRES, MORE OR LESS, IN THE J. M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

OWNER:
BRECKENRIDGE PROPERTIES
7004 BEE CAVE RD.
BLDG. 3, SUITE 330,
AUSTIN, TX. 78746

DATE: APRIL 27, 2010

SCALE: 1" = 200'

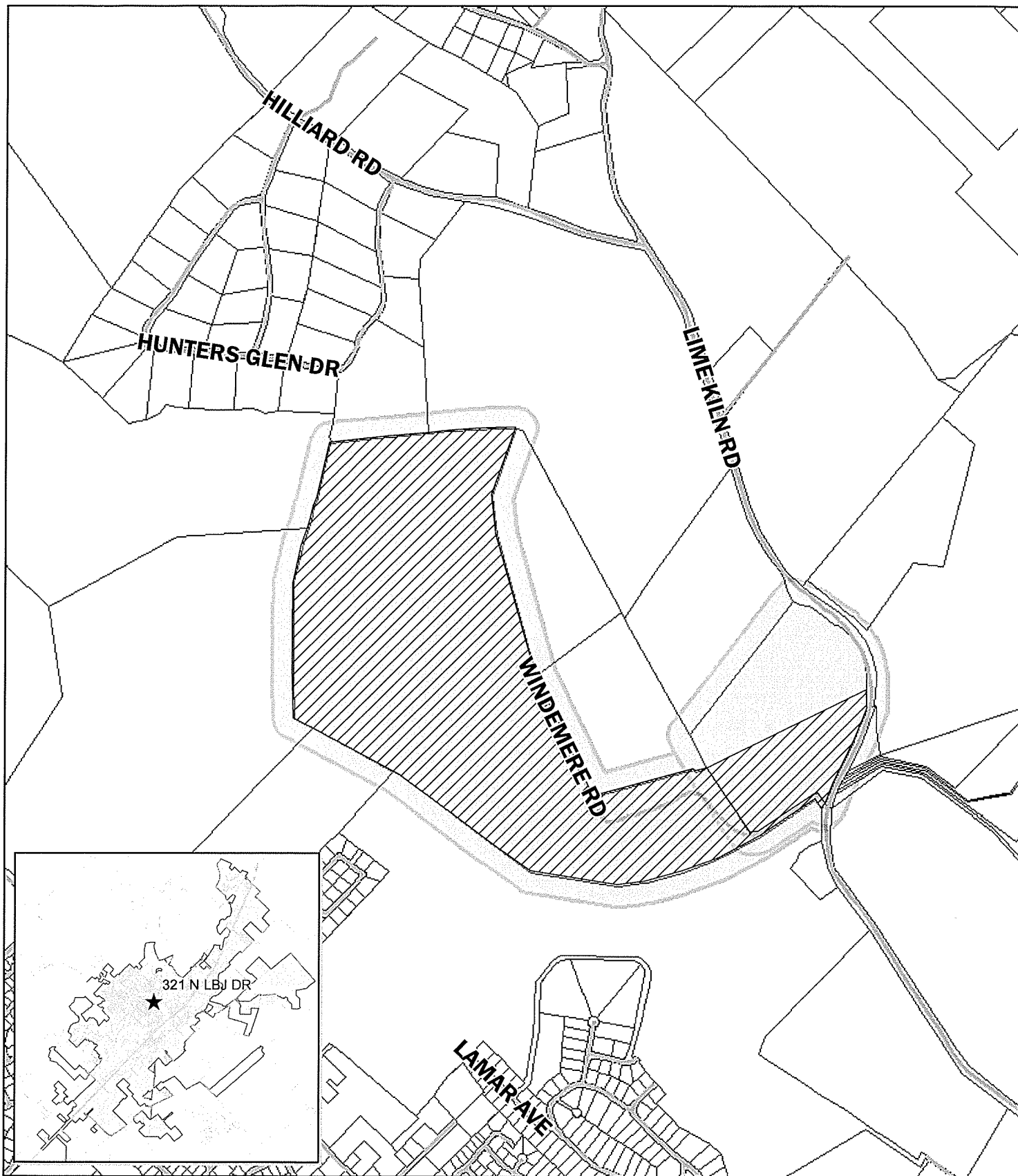
BYRN & ASSOCIATES, INC.

ENGINEERS SURVEYORS




P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945

CLIENT: BRECKENRIDGE PROPERTIES
DATE: APRIL 27, 2010
OFFICE: BRYANT
CREW: EVERETT, C. SMITH
FB/PC: 693/78
PLAT NO. 26348-09-10-6
JOBS/09/26348/BYRN SURVEY/26348 SUBD.DWG

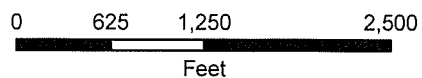
530744 10 11 10
530744 10 11 10
7004 BEE CAVE RD.
BLDG. 3, SUITE 330,
AUSTIN, TX. 78746



PVC-10-03
Windemere Dr
Map Date: 07/16/10

-  Notification Buffer
(200 feet)
-  •
-  Site Location
-  Historic District

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for reference purposes only. No warranty is made
concerning the map's accuracy or completeness.



PVC-10-03 Plat Variance Windemere Ranch



Applicant Information:

Applicant: Hermann Vigil
4303 Russell Dr
Austin TX 78704

Property Owner: Vince Wood
Rob Haug
2009 FM 620 North Ste 130
Austin TX 78734

Applicant's Request: The applicant is requesting a variance from Section 7.4.1.2 (d) of the Land Development Code, which requires all subdivisions with 75 or more lots must have at least two points of vehicular access (primarily for emergency vehicles). The applicant is proposing to meet this requirement by utilizing a single median-divided road.

Notification: Personal notification letter mailed to all property owners within 200' on July 16, 2010.

Response: Five emails in opposition (attached)

Subject Property:

Location: Windemere Ranch, San Marcos, TX
West of the intersection of Windemere Road and Lime Kiln Road, near the intersection with Sink Creek, approximately one mile northwest of Post Road, on the outer edge of the City limits in the northwest quadrant of the City of San Marcos.

Legal Description: 235.06 Acres out of the E. Clark Survey, A-84, Edward Burleson Jr. Survey, A-75, and T.J. Chambers Survey, A-2, Hays County, TX

Existing Zoning: FD (Future Development)

Land Use Map: Low Density Residential.

Utilities: Currently there is no City water or wastewater service available to this proposed development, but the Sink Creek Sewer interceptor, a CIP project not connected with this development, is currently under design. It is planned to be constructed along Sink Creek pending final design.

**Existing
Use of Property:** Vacant.

**Proposed
Use of Property:** Low to Medium Density Residential and Commercial.

Code Requirement and Background Information

The City of San Marcos Land Development Code (LDC) Section 7.4.1.2 states:

"All subdivisions with 75 or more lots must have at least two points of vehicular access (primarily for emergency vehicles) and must be connected with improved roadways to the City's improved thoroughfare and street system by one or more approach roads ... Two points of vehicular access shall be construed to mean that the subdivision has at least two improved roads accessing the subdivision from the City's improved thoroughfare system, and the subdivision has at least two road entrances. The Planning and Zoning Commission may, at its discretion and **upon a finding that such will not compromise public safety or impede emergency access**, accept a single median-divided entrance from the City's improved thoroughfare system, if the median extends into the subdivision for an unbroken length of at least 100 feet to an intersection internal street which provides at least two routes to the interior of the subdivision."

The subject property consists of two tracts of land mostly divided by a 60' wide strip of land extending from the adjacent property to the north. The smaller ± 20 acre tract fronts Lime Kiln Road, but the larger ± 212 acre tract has access only by means of a 50' wide gap between the 60' strip to the north and the property line to the south. This is the only connection between the two tracts and is partially located in the floodplain of Sink Creek. The property is situated adjacent to and abuts Sink Creek and is entirely within the Edwards Aquifer Recharge Zone, which results in a limit of 20% impervious cover per the LDC. The property was annexed in 2009 in preparation for development.

The applicants and owners have each submitted letters summarizing the project and providing background. The proposed Windemere Ranch subdivision consists of around 200 single-family lots with commercial along the section of the road intersecting Lime Kiln. As the proposed development has only limited frontage outside of the 100-year floodplain on Lime Kiln Road and does not front on any other existing roads, the applicants are proposing to provide a median-divided road as the entrance to the proposed subdivision as the required two points of vehicular access with a section running through the 50' choke point. The applicants currently own all of the property in question. No condemnation is proposed or necessary for this request. The future extension of Craddock Avenue is planned to cross through the property, as shown in the Transportation Master Plan.

Comments from Other Departments

The Fire Department questioned the ability to access wildland fires and expressed concern about flooding in the area of the proposed access. The Fire Marshal stated that the road should be elevated out of the 100-year floodplain because of the flooding in the area.

Planning Department Analysis:

The property is currently designated for very low density residential development, and the property could be subdivided up to 75 lots without a second means of access. The higher density proposed for this development triggers the need for this variance. This will also require an amendment to the future land use map and a zoning change.

Of the criteria in 1.10.2.4., the most pressing issue involves safety. Does this location have characteristics that pose a potential to compromise public safety or impede emergency access if a second roadway is not provided? The floodplain of Sink Creek and the design of Lime Kiln Road combine to limit access for emergency services to this entire area of the city. The amount of development, either currently allowed or proposed, does not require the two low water crossings along Lime Kiln to be replaced by the developer. Hays County has plans to build a bridge at this location, but construction has not begun and the timetable is uncertain. Hence, the proposed project will have limited emergency access in even small rain events until this bridge is constructed at some point in the future.

The new section of roadway from Lime Kiln to the residential section travels through the floodplain as well. Per the LDC, the section will be required to be limited to six inches of headwater depth. It is unclear whether this would be acceptable for emergency vehicle access. A large development in the hill country such as Windemere is vulnerable to wildfires. In the event of a fire, the one access point becomes both an entrance for emergency vehicles and an evacuation for residents.

Because of these concerns, the Fire Department has stated that they would not support any additions to this subdivision or any adjacent subdivisions without a second ingress point. This is problematic for two reasons. First, the surrounding area is outside city limits. The city has no zoning authority, and by state law, subdivisions are required to be statutorily approved if certain criteria are met. State law prohibits denial of a subdivision based on the adequacy of the roadway system, though densities may be limited. Secondly, criteria numbers 5 and 6 in 1.10.2.4 state that granting the variance should not be detrimental to the health of surrounding properties or adversely affect their property rights.

In similar cases in the recent past the City has required three subdivisions to build the two separate streets for access. In all cases development was allowed up to the lot limit but not expanded until the second road was under construction. One project has successfully followed through with the second street and phase while the others have not.

There has been significant concern expressed by emergency services staff and community members about conditions in the area and that granting this request will only worsen a poor situation. Staff feels the use of a median entry boulevard is an appropriate alternative to two independent roadways in the right circumstances. However, in light of the identified safety concerns and the fact that the property could be developed up to 75 lots without requiring this action by the commission, staff finds that the request does not meet all criteria in 1.10.2.4 and is recommending **denial** of the requests.

However, *if the use of a divided roadway is allowed*, staff recommends the following:

1. The roadway should be elevated to be passable for emergency vehicles during the 100-year flood.

2. The layout should feature increased internal connectivity. The Commission should consider a minimum link-to-node ratio of 1.2 on-site. The current proposal has a ratio of 1.13. Increased connectivity will provide for better response time for emergency vehicles and more opportunity for evacuation of residents in emergency situations.
3. In accordance with section 7.4.1.2 of the LDC, all lots along the divided roadway segment shall front on side streets, aligned with median breaks, until the first interior intersection to facilitate safe turning maneuvers and assure passage of emergency vehicles.
4. No greater density shall be allowed than is represented in the proposed concept plan.
5. The development shall participate in the Wildfire Urban Interface Program.

Planning Department Recommendation	
	Approve as submitted
	Approve with conditions or revisions as noted
	Alternative
X	Denial

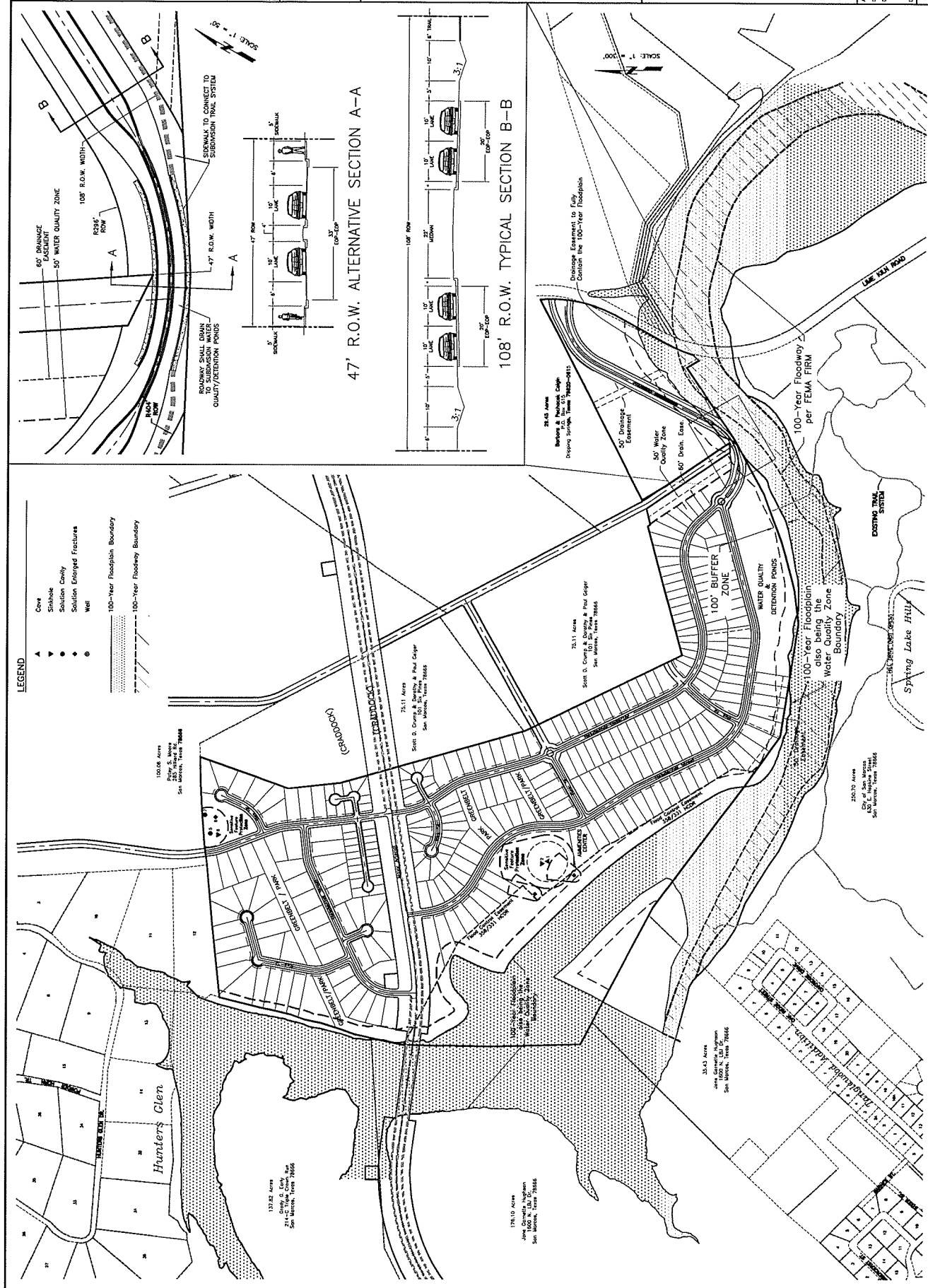
The Commission's Responsibility:

The Commission is charged with making the final decision regarding this variance request. The city charter delegates all platting variances to the Planning and Zoning Commission. The Commission's decision on platting matters is final and may not be appealed to the City Council. Your options are to approve or deny this variance request.

Section 1.10.2.4 Criteria for Approval

In deciding the variance petition, the decision-maker shall apply the following criteria:

1. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Land Development Code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
2. The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
4. Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
5. Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;
6. Granting the variance petition is consistent with any special criteria applicable to varying particular standards, as set forth in Chapters 4 through 7 of this Land Development Code;
7. The hardship or inequity suffered by petitioner is not caused wholly or in substantial part by the petitioner;
8. The request for a variance is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
9. The degree of variance requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.



Windemere Ranch Development Summary

Windemere Ranch is planned as a 235 acre primarily residential development containing approximately 135 acres of single-family / patio home / townhome sites, a community center site, over 78 acres of open space/greenbelt/parks, and 22.5 acres of land that will be suitable for commercial or mixed use development. The land is well suited for mid to upper priced homes (\$225K-\$375K in this market) in a close proximity to downtown. The largest scale recent development of this type is sold out (Willow Creek \$60k-\$70k per lot on septic). Windemere Ranch is uniquely positioned to provide new home sites and homes in close proximity to the university and downtown in an upscale, hill country, west of I-35 location.

Since the original 212.5 acre tract was purchased, it has been annexed by the City of San Marcos, thereby allowing the site access to city services (water, wastewater, etc.). The adjoining 22.5 acres was subsequently purchased to greatly improve access, and offer potential future commercial or mixed use development. At this time, the final design work is being completed on a major Capital Improvements Project to extend a 24 inch sewer line through the tract.

This property is located in the beautiful Texas Hill Country and contains terrain and vistas found in few other areas of the state. The land is also located over the Edwards Aquifer Recharge Zone and abuts Sink Creek, an important and sensitive stream that discharges into Spring Lake, forming the headwaters of the San Marcos River. In recognition of the importance of protecting the sensitive natural features and in an effort to preserve the natural beauty of the land, the following project initiatives and features have been included in the design plans:

- Habitat, cultural/archeological resources, and wetlands surveys have been completed, with no adverse circumstances indicated in any of these reports.
- A geological assessment was completed which indicated minimal geological features. Those features are addressed and accommodated in the approved TCEQ review.
- Low Impact Development (LID) techniques are being utilized throughout the planning, design, and development of this project. LID is an approach to land development that uses various land planning and design practices and technologies to simultaneously conserve and protect natural resource systems and reduce infrastructure costs. The design and operation of the Windemere Ranch community includes the principles and practices identified below:
 - Preserve Open Space and Minimize Land Disturbances

- Open-space tracts are incorporated into community designs and planned as components of larger contiguous areas.
 - Over 78 acres, or 33%, of the site, is designated for parks, protection zones, or general open space.
 - The site will not be clear-cut. Only vegetation necessary for the installation of infrastructure and the creation of building sites will be removed.
 - Re-vegetation with native plants and trees will occur as each phase develops.
- Protect Sensitive Natural Features and Natural Processes
 - Protection of the site's sensitive natural features and natural processes is paramount to the planning of the community.
 - Project will develop in full compliance with all local and TCEQ regulations regarding the protection of sensitive features.
 - TCEQ has approved the geologic Assessment and the plans for the protection of sensitive features.
 - A watershed Protection Plan Phase II, and a Water Pollution Abatement Plan will be prepared prior to the development of each phase.
- Identify and Link On- and Off-Site "Green Infrastructure"
 - Windemere Ranch's "Green" infrastructure represents the planned and managed network of wilderness, parks, greenways and easements with conservation value that support native species, maintain natural ecological processes, and sustain air and water resources.
 - The Windemere Ranch trail system will provide direct linkages to the Springlake Preserve trail system.
- Incorporate Natural Features (Wetlands, Riparian Corridors, Mature Forests) into Site Designs
 - Windemere Ranch will take advantage of natural resources for both their functional and aesthetic qualities.
 - Natural riparian corridors linking park and open space areas will be retained
 - When feasible, wetlands and pond systems will be designed to provide storm water management solutions as well as aesthetic and recreational benefits for the entire community.
- Customize Site Design According to the Site Analysis
 - The Windemere Ranch Conceptual Land Plan uses the information gathered during the site analysis to create the best balance between development and the conservation of natural resources. By identifying buildable and non-buildable

- areas of a project the Plan directs development into areas that will experience the least impacts on air, soil, and water.
- Site design emphasizes the relationship between the built and the natural environment by clustering development away from the sensitive areas and by encouraging interaction through trails linking riparian corridors, parks, and natural open space.
- Decentralize and Micromanage Storm Water at Its Source
 - Understanding the difference between pre- and post-development hydrologic patterns is critical to LID. The use of best management practices to reduce the amount of impervious surfaces, disconnect flow paths (i.e., downspouts connected to storm sewers), and treat storm water at its source all help minimize the impacts to local hydrology.
 - Overall impervious cover will be maintained below the maximum amounts permitted.
 - Water quality system will meet all state and local requirements for development over the recharge zone.
 - BMP's will include the use wetland ponds and grass-lined swales instead of interconnected concrete drainage systems.

W VIGIL & ASSOCIATES
CONSULTING SERVICES

4303 Russell Dr • Austin, Texas 78704

JUN 29 AM 10: 07

DEVELOPMENT SERVICES
CITY OF SAN MARCOS

June 28, 2008

Mr. Chuck Swallow, Director
Planning and Development Department
630 East Hopkins
San Marcos, Texas 78666

Re: Windemere Ranch
Variance Request

Dear Sirs:

The Owners of two connected tracts of land located just North of the intersection of Lime Creek Road and Sand Creek, wish to develop their land. The total area of the property is 235 acres more or less. The owners have submitted concept plans, preliminary layouts and similar planning documents for several years. The shape of the property and the location of the 100 year flood plain are such that only a single point of access can be accommodated in their frontage on Lime Creek Road. When a development has a single access point the number of lots is limited to 75 lots on such a single access. The Land Development Code, Section 7.4.1.2, states that the Planning and Zoning Commission may allow the use of a median divided street as the second access required when there is no other available street and the proposed medianed street extends at least 100 feet into the proposed subdivision. We propose the use of a median divided roadway with two lanes in each direction, extending at least 100 feet into the subdivision as considered in the Code. Further, the only point of contiguity of the two parcels is a point that is only 47 feet wide. In order to accommodate four lanes into 47 of right of way requires that the lanes be 10 feet wide, or that the road be narrowed to two lanes at the location where it narrows to 46 feet. At this point the road will encroach into the 100 year flood plain as established by FEMA. It should be pointed out that development of the property requires the crossing of the 100 year flood plain in this limited location.

Furthermore, the owners of this property have spent the last 18 months working diligently with city staff on City Council directives to accommodate the city's thoroughfare plan for right-of-way acquisition and the implementation of the capital improvement project for the Sink Creek Interceptor II alignment and construction. During this lengthy and expensive process, the owners have had no other choice but to rely on the City Council's approval of this alignment and directives that were given to all those concerned to facilitate these projects. Given these circumstances, we feel the only fair and equitable solution is that the variance be granted. Please refer to the attachment for verification of these projects.

Please consider this a request for your approval of a divided medianed street as the second access for this subdivision.

The proposed subdivision and the layout of the access road are shown in the attached exhibit. We offer the following facts in support of our request:

1. At present there is only one access point from the property to the street system of the City. The access is Lime Kiln Road. The City plans another access in the future through the extension of Craddock Street. The condition of a single access road will be a temporary one, until the second access is implemented by the City. The subdivision dedicates the right of way for Craddock extension, making it more feasible in the future.
2. Because there is only one road access we intend to provide an access road with a central median from Lime Kiln Road to the point here the road can be split into two separate streets, a distance of approximately 2500 feet. The purpose of the divided road is to increase safety in case one of the carriageways is obstructed. The divided road will end in a traffic Circle in order to allow the smooth flow of traffic in one direction in each of the carriageways. It should be pointed out that the road will be narrowed to 46 feet in right of way at one point, thus still allowing the mediated access in over 90 percent of the road length
3. Strict application of the prohibition on access is impractical due to the narrowness of the property in the access area due to shape of the property and the proximity of Sink Creek and the 100 year flood plain zone of said Sink Creek
4. The granting of this variance will not be in any way detrimental to the health and safety of the public, all the contrary, the speed in the divided road will be set a low speed limit (30 mph). Thus the safety and access conditions will be similar to those in similar subdivisions fronting on residential streets.
5. The granting of this variance will not create any environmental effects; on the contrary, by placing the road connection to Lime Creek as far North, we get it further from the 100 year flood plain and allows the City to improve the Sink Creek crossing in the future without disturbing the intersection.
6. The approval of this request will make it easier to connect Craddock in the future.
7. The granting of this variance will not have any effect on the orderly development of other land in the area, as the conditions of topography and shape are unique in this parcel.

Respectfully submitted,

Hermann Vigil, P.E.

Attachment

From: Serna, Francis
Sent: Monday, July 19, 2010 9:52 AM
To: Foreman, John
Subject: FW: Windermere Development - Road Requirement

From: Huffaker, Kevin M [mailto:khuffaker@txstate.edu]
Sent: Monday, July 19, 2010 9:23 AM
To: Planning Information
Subject: Windermere Development - Road Requirement

City of San Marcos Planning Department,

Consider the measure you already have in place requiring two roads to serve this development. I live out Lime Kiln Road and have traveled it daily for the past 12 years, and I oppose the assumption that relying on a single shared entrance to supply access to the Windermere Development would meet the criteria for public safety and quality of life.

It is my understanding the existing proposal will use eminent domain to server the Windemere development exclusively, and I don't see the public or civic use as benefit by this action which is customarily behind most uses of eminent domain.

I also understand the city's requirement is clear that this development would need 2(two) roads. It couldn't be more warranted; Lime Kiln is increasingly burdened as more people live out here. Just the intersection alone at Lime Kiln and Post Road continues to be unsafe and congested, competing with school bus traffic serving Travis Elementary School.

Access to outlying communities shouldn't suffer additional impediments resulting from traffic congestion and increased liability for single roads to become easily blocked. This will have an impact on emergency services and access to town during times of flooding. I've seen this occur, and it will not be improved by adding the traffic of a new development without also providing alternative roads.

Please consider your responsibility to the larger community when making these important decisions.

Respectfully,

Kevin Huffaker
Director of Classroom Technology Support
Texas State University-San Marcos
Instructional Technologies Support
(512) 245-8992
khuffaker@txstate.edu

Foreman, John

From: Serna, Francis
Sent: Wednesday, July 21, 2010 2:56 PM
To: Foreman, John
Subject: FW: Windemere Development

-----Original Message-----

From: Dupont, Ann M [mailto:ad23@txstate.edu]
Sent: Wednesday, July 21, 2010 2:56 PM
To: Planning Information
Subject: Windemere Development

As the principal landowner across Lime Kiln Road at the point of entrance to the Windemere Ranch I am writing in opposition to allowing any variance as to entrance requirements for the project. Lime Kiln Road cannot now effectively handle the 6,000 cars reported in a recent county presentation, especially in wet conditions. The proposed access is within the area recently noted as a secondary flood issue on Lime Kiln. As a ranch owner since the 1960's I have repeatedly seen my land carved away to provide better egress to subdivisions built long ago with only one , inadequate way out. I am very opposed to any situation that would again place stress on this fragile terrain or cause pressure on adjacent landowners as a result.

Sincerely,

Ann DuPont Ph.D.
145 Spring Road
San Marcos, Texas 78666
(512) 392-3651

Foreman, John

From: Serna, Francis
Sent: Wednesday, July 21, 2010 3:03 PM
To: Foreman, John
Subject: FW: Windemere

See email below addressed to Planning Information-

From: Diane Young [mailto:youngdw@centurytel.net]
Sent: Wednesday, July 21, 2010 3:00 PM
To: Planning Information
Subject: Windemere

To Whom It May Concern,

Eminent Domain, in my opinion, should be used very sparingly, and only in cases of a clear **necessity** for the public good. The Windemere development in no way qualifies as in the "public good" or as a "necessity". This development will jeopardize the water quality of the Edwards Aquifer and lower the quality of life for those of us who live off of Lime Kiln Road. Should the taxpayers of the City of San Marcos or Hays County subsidize private developers? I do not like corporate welfare especially when the result will be poorer water quality, loss of wildlife habitat, more traffic congestion, water supply problems in times of drought, increased water pollution from pesticides, herbicides, oil and other household waste. The cost to taxpayers for any such development also includes the cost of additional city services like police and firefighting personnel, public education and numerous other services. I certainly object to the city making special rules for the Windemere development and to the city proposing to take land from a private citizen by eminent domain.

Sincerely,

Diane W. Young
815 Thousand Oaks Loop
San Marcos

Foreman, John

From: Serna, Francis
Sent: Friday, July 23, 2010 7:57 AM
To: Foreman, John
Subject: FW: Windemere

See email below

From: Ann Jensen [mailto:ann@bookways.com]
Sent: Friday, July 23, 2010 6:55 AM
To: Planning Information
Subject: Windemere

Dear P&Z Commissioners:

I am opposed to allowing the Windemere subdivision to be built over land that feeds into Sink Creek, Spring Lake, and the San Marcos River. We need to protect fragile environment in that area as well as our water resources. It is also a very bad idea to allow a subdivision to have only one entrance, and condemning a person's land in order to achieve this is abhorrent to me. An individual's property should not be taken to produce gain for a developer/large landowner.

Thanks for your consideration of these concerns.

Ann Jensen
1724 W McCarty Lane
San Marcos
392-7025
ann@bookways.com

Foreman, John

From: Serna, Francis
Sent: Friday, July 23, 2010 8:02 AM
To: Foreman, John
Subject: FW: Windemere

See email below

From: Craig Jensen [mailto:craig@bookways.com]
Sent: Friday, July 23, 2010 7:58 AM
To: Planning Information
Subject: Windemere

Dear P&Z Commissioners:

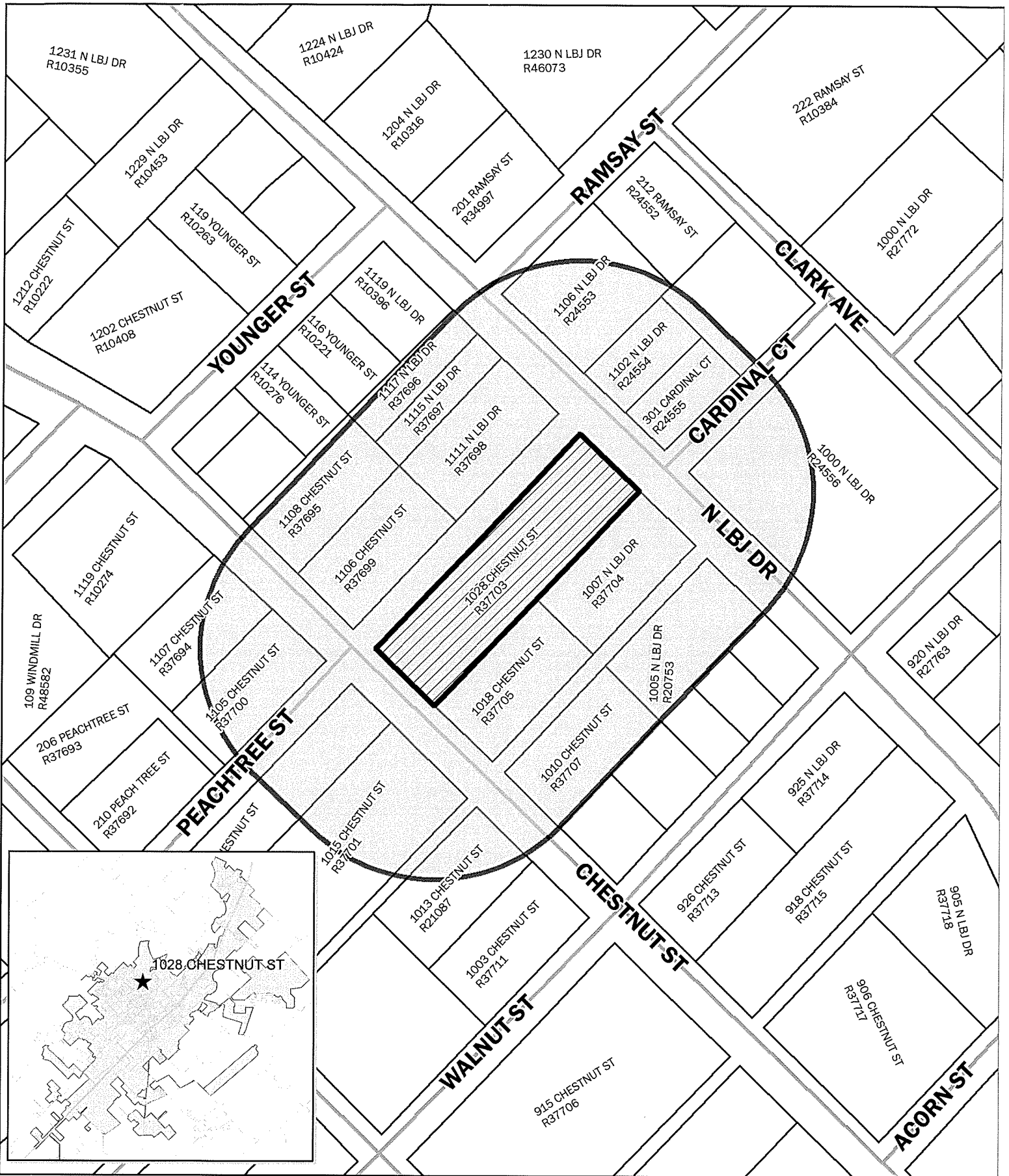
This project is wrong on every level. We should not be compromising one of the very things that makes our community unique and desirable—the clean and free flowing San Marcos River. There is ample evidence of the environmental sensitivity of this area in which the Windemere subdivision is proposed to be built and it defies logic to destroy this fragile ecosystem for short term financial gain. Worse still, to compromise zoning requirement by allowing only one entrance to the subdivision and condemning a neighbors land in order to get this entrance is a travesty. This project should be rejected outright.

With regards,




Craig Jensen

Craig Jensen, BookLab II

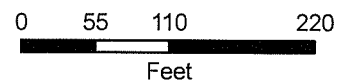
1724 W. McCarty Lane
San Marcos, TX 78666
512-392-2363
<http://www.bookways.com>



LUA-10-08
ZC-10-11
Map Date: 06/23/10

-  Notification Buffer (200 feet)
-  Site Location
-  Historic District

This map was created by Development Services for reference purposes only. No warranty is made concerning the map's accuracy or completeness.



Land Use Map Amendment

LUA-10-08

1028 Chestnut



Summary:

The property owner is proposing a land use map amendment from Low Density Residential (LDR) to High Density Residential (HDR).

Applicant:

Vincent Gerard and Associates Inc.
1715 Capital Tx. Highway Suite 207
Austin, Texas 78746

Property Owner:

River City Loans LLC.
Don Fry Sr.
23165 Hanging Oak
San Antonio, Texas 78226

Notification:

Public hearing notification was mailed July 16, 2010.

Response:

None as of July 23, 2010.

Subject Property:

Legal Description:

Lot 80 of the Third Division Park Addition

Location:

1028 Chestnut Street

Existing Use of Property:

Single Family house

Proposed Use of Property:

Multi-family

Proposed Land Use:

HDR- High Density Residential

Sector:

Sector 3

Frontage On:

Chestnut Street. Chestnut Street is classified and constructed as a residential street.

Utilities:

Wastewater capacity in this area is limited.

Area Land Use Pattern:

	Existing Land Use	Future Land Use
N of Property	Undeveloped	High Density Residential
S of Property	Chestnut Street bounds the property on the south. Across Chestnut Street the property is developed as apartments.	High Density Residential
E of Property	Single Family Home	Low Density Residential
W of Property	Peachtree Street, an undeveloped street, bounds the property on the west. Across Peachtree the property is developed as a single family residence.	Medium Density Residential

Project Summary:

The applicant is requesting a land use map amendment from Low Density Residential (LDR) to High Density Residential (HDR). This request is proceeding concurrently with a zoning change from Single-Family (SF-6) to Multi-Family (MF-24).

Planning Department Analysis:

The intent of the applicant is to construct an apartment complex. Staff has evaluated the request for consistency with the Horizons Master Plan and the Sector 3 Plan.

Consistent	Neutral	Inconsistent	Horizons Master Plan Policy Statement
		X	Policy LU-3.1: The City shall develop the residential areas of San Marcos according to the Future Land Use Plan so that future growth can be accommodated, a mixture of housing types and densities can be provided, and adverse impacts from traffic, environmental hazards and incompatible land uses can be avoided.
		X	Policy LU-3.4: The City shall provide, within the framework of the Future Land Use Plan, a wide choice of owner-occupied and rental housing types that will give adequate housing to families and individuals of all income levels.
	X		Policy LU-4.2: The City shall encourage residential areas, especially higher density uses, have access to shopping, recreation, and work places that are convenient not only for automobile traffic but also for foot and bicycle traffic in order to minimize energy consumption, air pollution, and traffic congestion.
		X	Policy LU-4.3: The City shall encourage medium and high density residential developments to have direct access to at least collector width streets to accommodate the traffic volumes and turning patterns generated by high concentrations of people. They should also be located near major arterials. Low density residential development should not be impacted by heavy traffic generated by medium and high density areas.
	X		Policy LU-4.4: The City shall require medium and high density residential developments to be located on larger sites to allow for proper buffering, adequate parking and landscaping, and enough flexibility in design and layout to insure adequate development.
		X	Policy LU-5.6: The City shall not allow the rezoning any property to a more intensive residential district without proof that the street system, utilities, drainage, and other requirements are adequate for the proposed density.

The subject property is located approximately ¼ mile from the Texas State University campus. As is evident in the zoning and usage of the surrounding properties the subject neighborhood is currently experiencing a transition from what was once a mixture of residential uses to medium and high density residential development. While it is within close proximity to the university and therefore ideal for the development of student housing both N.LBJ and Chestnut streets are also gateways into established single family residential neighborhoods.

The subject property is located on the corner of Peachtree Street and Chestnut Street. Peachtree Street is currently undeveloped and because the property is platted the development of the street would be at the expense of the City rather than the developer. Chestnut Street is classified and is designed as a

residential street and has a ROW width of approximately 40 feet (2 lanes of traffic without sidewalks). The proposed change in zoning would facilitate the opportunity for infill development, however due to the nature of Chestnut Street the development of this parcel as high density residential is not compatible. Furthermore, while it is desirable to create a dense environment within walking distance to the university it is also important to create a neighborhood where there is a mixture of residential types.

While the requested future land use map designation change is generally consistent with the surrounding land uses it is not consistent with the following policy statements outlined in the Horizons Master Plan, and the below criteria for approval of a future land use map designation.

- Policy LU-4.3: The City shall encourage medium and high density residential developments to have direct access to at least collector width streets to accommodate the traffic volumes and turning patterns generated by high concentrations of people. They should also be located near major arterials.
- Policy LU-5.6: The City shall not allow rezoning any property to a more intensive residential district without proof that the street system, utilities, drainage, and other requirements are adequate for the proposed density.
- Policy LU-3.22: The City shall recognize that different types of residential uses have different requirements for utilities, etc., and that land developed for one density may require more than rezoning to make it suitable for a higher density.
- Policy LU-3.4: The City shall provide, within the framework of the Future Land Use Plan, a wide choice of owner-occupied and rental housing types that will give adequate housing to families and individuals of all income levels.
- Policy LU-3.1: The City shall develop the residential areas of San Marcos according to the Future Land Use Plan so that future growth can be accommodated, a mixture of housing types and densities can be provided, and adverse impacts from traffic, environmental hazards and incompatible land uses can be avoided.

Staff is recommending Denial.

The Commission's Responsibility:

The Code requires the Commission to hold a public hearing and receive public comment regarding the proposed Land Use Map Amendment. The Commission's advisory recommendation to the Council is a discretionary decision. The City Council will ultimately decide whether to approve or deny this request, and will do so through the passage of an ordinance.

After considering the public input, your recommendation should be based on the "fit" of this proposal for a land use amendment with the general character, land use pattern and adopted policy for the area. Section 1.4.1.4 charges the Commission to consider the following criteria for amendments to the Master Plan's Future Land Use Map:

- Whether the amendment is consistent with the policies of the Master Plan that apply to the map being amended;
- The nature of any proposed land use associated with the map amendment; and,
- Whether the amendment promotes the orderly and efficient growth and development of the community and furthers the public health, safety and general welfare of the City.

List of Attachments:

Location Map Application
Maps Site Photos

Prepared by:

Sofia Nelson

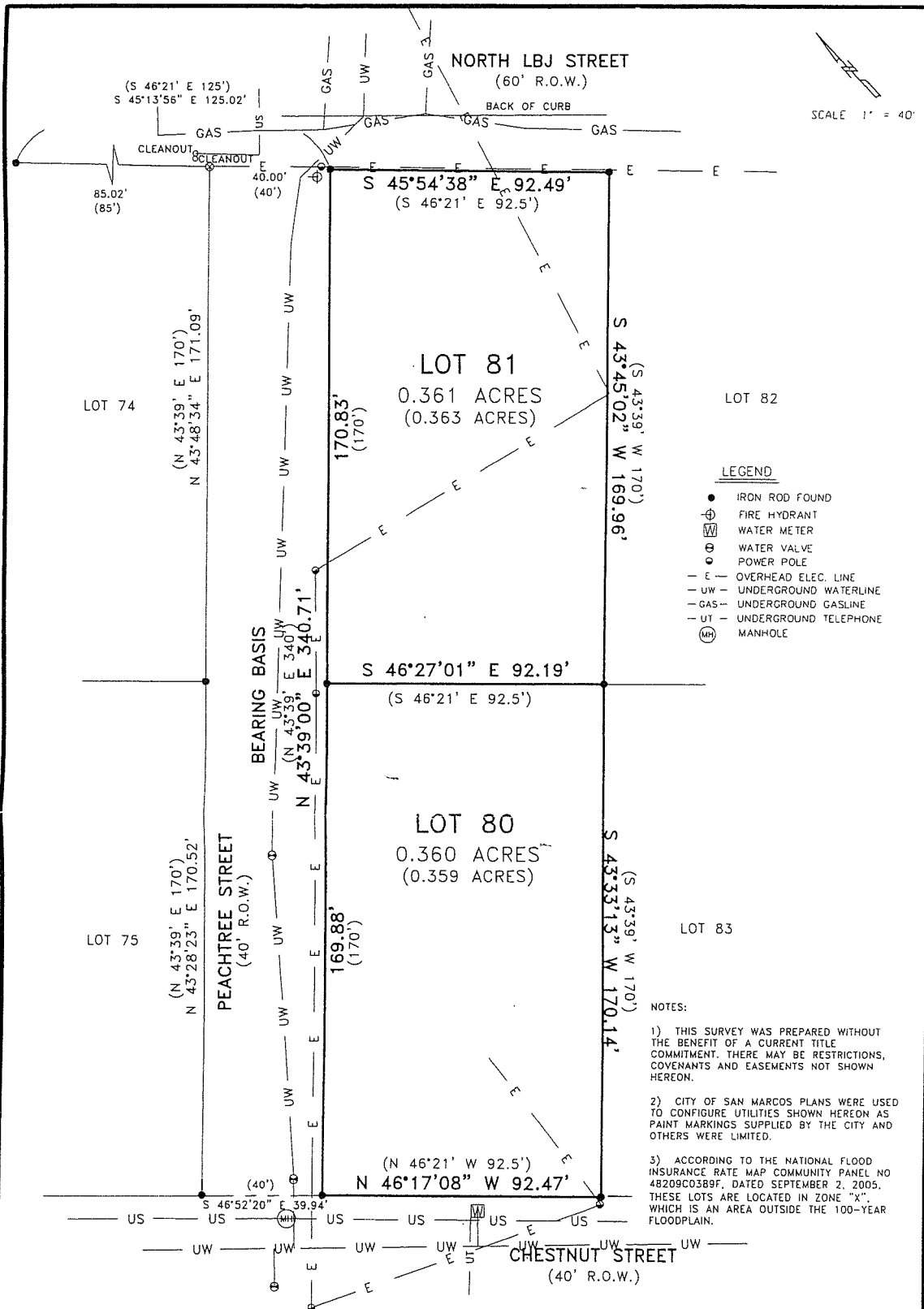
Senior Planner

July 23, 2010

Name

Title

Date



I, SHAWN T. ASH, DO HEREBY CERTIFY THAT THIS PLAT OF THE PROPERTY SHOWN HEREON, WAS PREPARED FROM A SURVEY PERFORMED UNDER MY DIRECTION AND SUPERVISION DURING DECEMBER 2009, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A PUBLIC RIGHT OF WAY.

SHAWN T. ASH, R.P.L.S.
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NUMBER 5687 STATE OF TEXAS

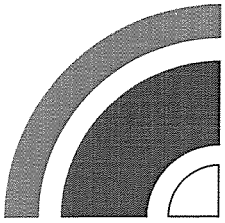
12/11/09
 DATE



ASH
 &
 ASSOCIATES
 surveying and mapping

142 JACKSON LANE
 SAN MARCOS, TEXAS 78666
 (512) 392-1719
 FAX (512) 392-1928

JOB NO: 09-3108 DRAWN BY: FCL 5/67/47



VINCENT GERARD AND ASSOCIATES, INC.

Mr. Mathew Lewis
Assistant Planning Director
City of San Marcos
"Hand Delivered"

June 17, 2010

RE: 1028 Chestnut Rezone and Land Use Plan Amendment Application.

Mr. Lewis;

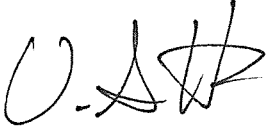
As representatives of the owners of the referenced tracts, please accept this summary letter for requested Rezone and Land Use Plan amendment for your staff review. The property is currently 2 legal lots, Lots 80 & 81, Third Division, Park Addition recorded in Vol. 56, Page 46 of Hays County Records. The current use is a residential rental property on Chestnut and a vacant lot on N. LBJ. We are requesting MF 24 zoning change on both lots, consistent with the adjoining property immediately to the west and east. After reviewing the surrounding land uses and zoning, it appears that the neighborhood is in transition from single family to Multi family and Mixed Use, and has been in transition for quite some time. North LBJ is a vibrant pedestrian and active mixed-use corridor due to the university presence, existing commercial (NC) land uses and numerous high-density apartment projects. With 3 sides adjacent to our tracts either zoned high-density residential or mixed use, these two residential tracts should be zoned consistent with surrounding land uses and trending market conditions. The rezone and revision to the land use plan is necessary to provide affordable housing for students at a convenient location to campus, close to the west entrance and within walking distance from 1028 Chestnut.

High-density multi-family projects within this close proximity to the University also promote alternate forms of transportation. Within walking or biking distance to the west gate and classrooms, this serves the community and University with less onsite and satellite parking vehicular access problems. With San Marcos and Texas State facing so many traffic issues now and in the future, future land use patterns should recommend high-density complexes at or near this location of West Campus access to promote accessible rentals.

Current tax values suggest that the existing use is underutilized. Land use patterns indicate a need for this type of occupancy and development and the tax base has a potential to increase 15x from the existing value to a developed apartment complex.

Therefore we respectfully request your review and recommendation for the owners desire to rezone the tract to a use that is consistent with the neighboring properties.

Sincerely,


A handwritten signature in black ink, appearing to read 'V. G. Huebinger', with a stylized, looped 'H'.

Vincent G. Huebinger
Vincent Gerard & Associates Inc.

*Xc: Bill Couch, COSM
Don Fry Sr. River City Loans*

PROJECT LOCATION
1028 CHESTNUT ST.
SAN MARCOS, TX





VINCENT GERARD & ASSOCIATES
LAND PLANNING & ZONING CONSULTANTS
1715 CAPITAL OF TEXAS HWY SOUTH, STE. 207
AUSTIN, TEXAS 78746
(512)328-2693 - FAX: (512)328-4011 - vgerard@flash.net

PROJECT LOCATION
1028 CHESTNUT ST.
SAN MARCOS, TX

Cardinal
LBJ Dr
Chestnut St
Peachtree St

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LAND PLANNING & ZONING CONSULTANTS
1715 CAPITAL OF TEXAS HWY SOUTH, STE. 207

AUSTIN, TEXAS 78746
(512)328-2693 - FAX: (512)328-4011 * vgerrard@flash.net



City of San Marcos Zoning Atlas



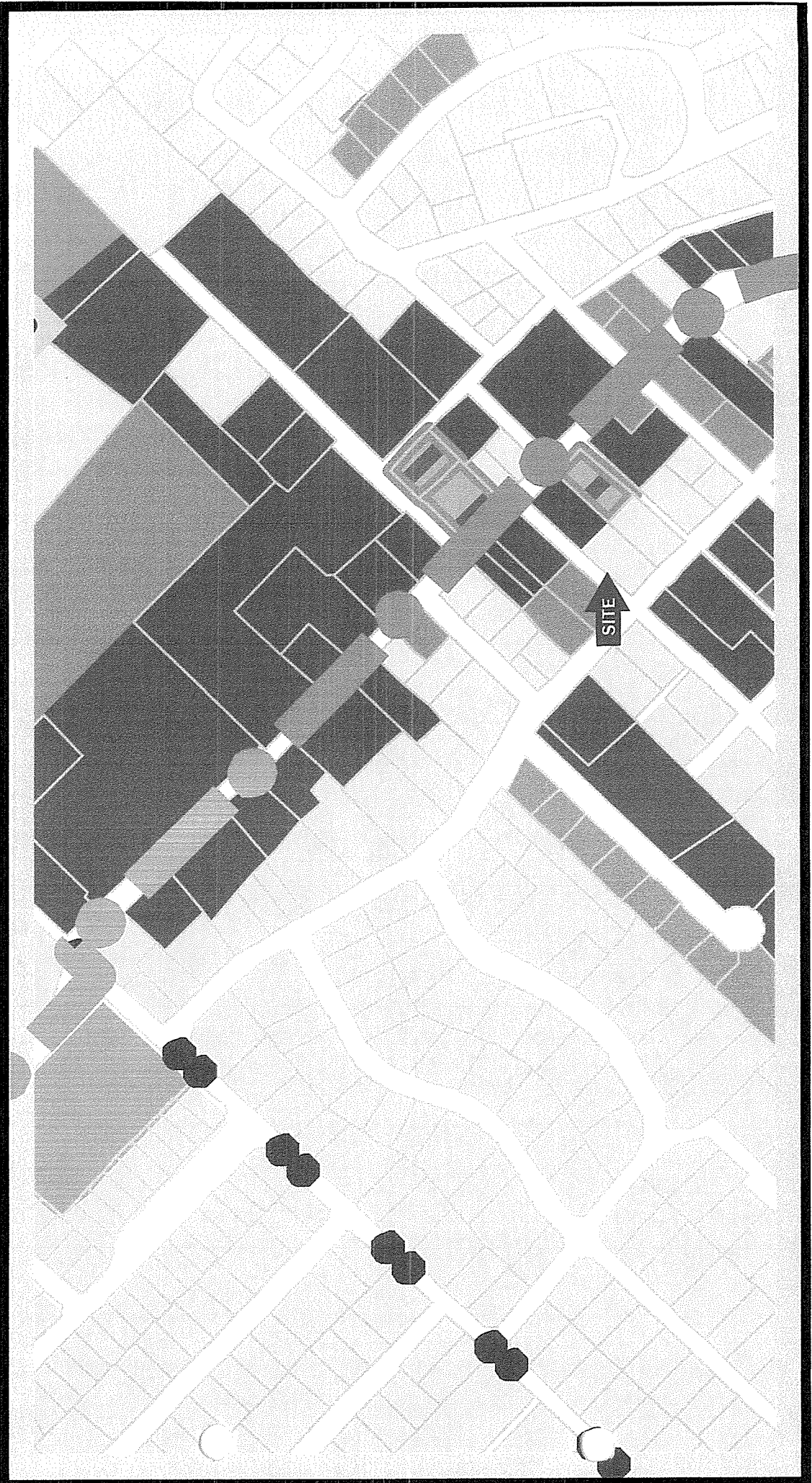
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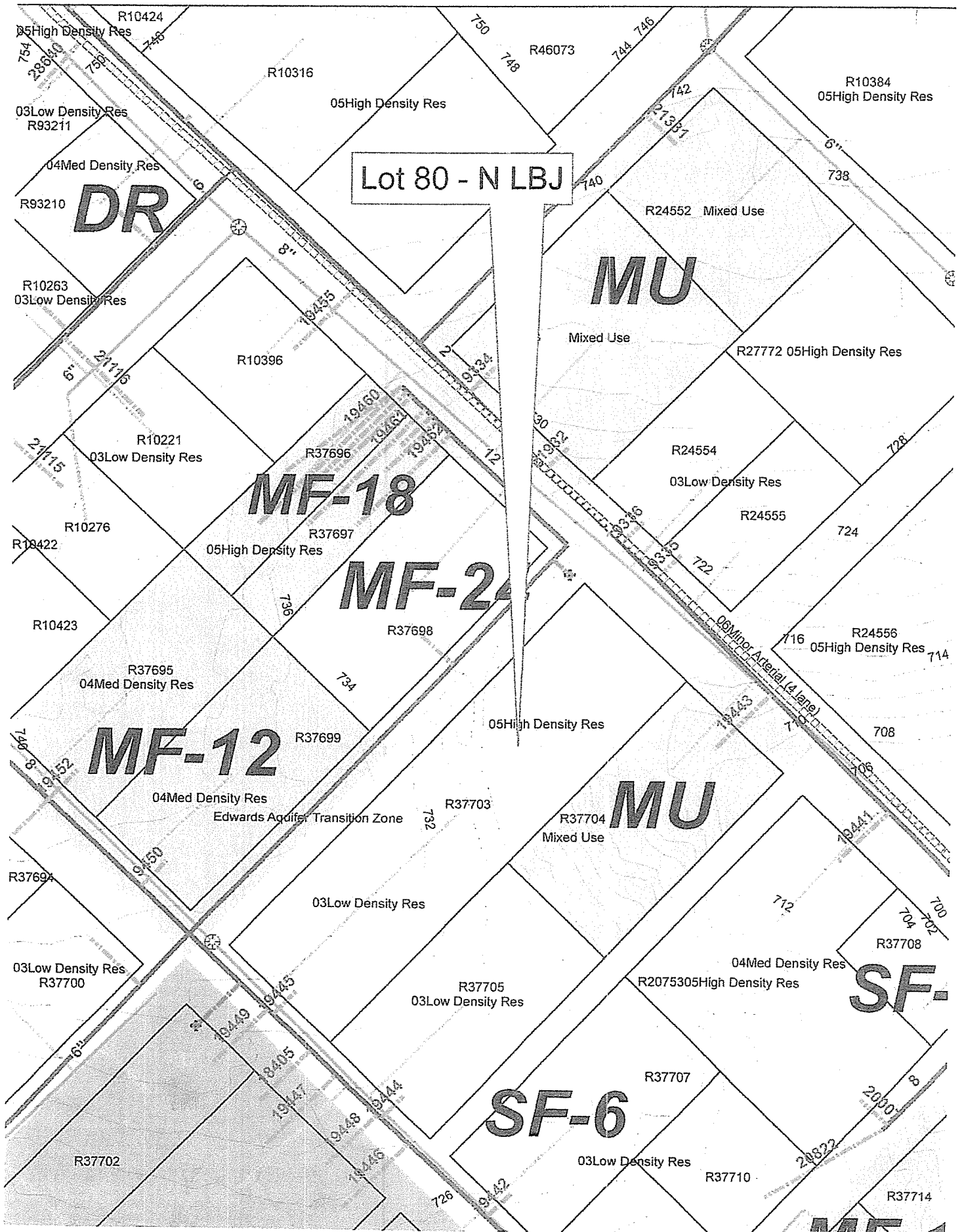
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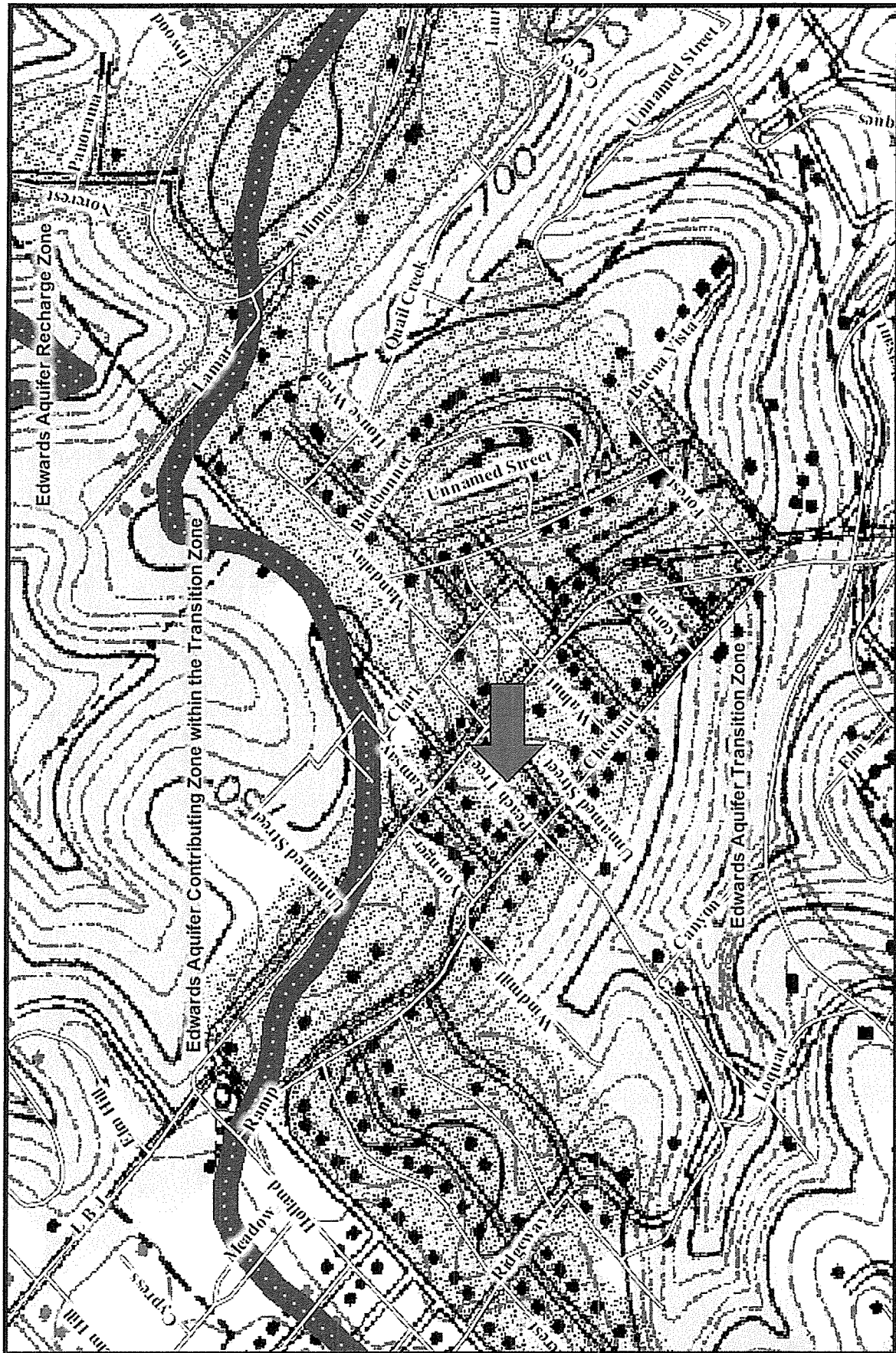
G5a | G5b | G5c
G5c | G5d | G5e
H5a | H5b | H5c

Source: City of San Marcos
Development Services
January, 2010

Future Land Use Plan

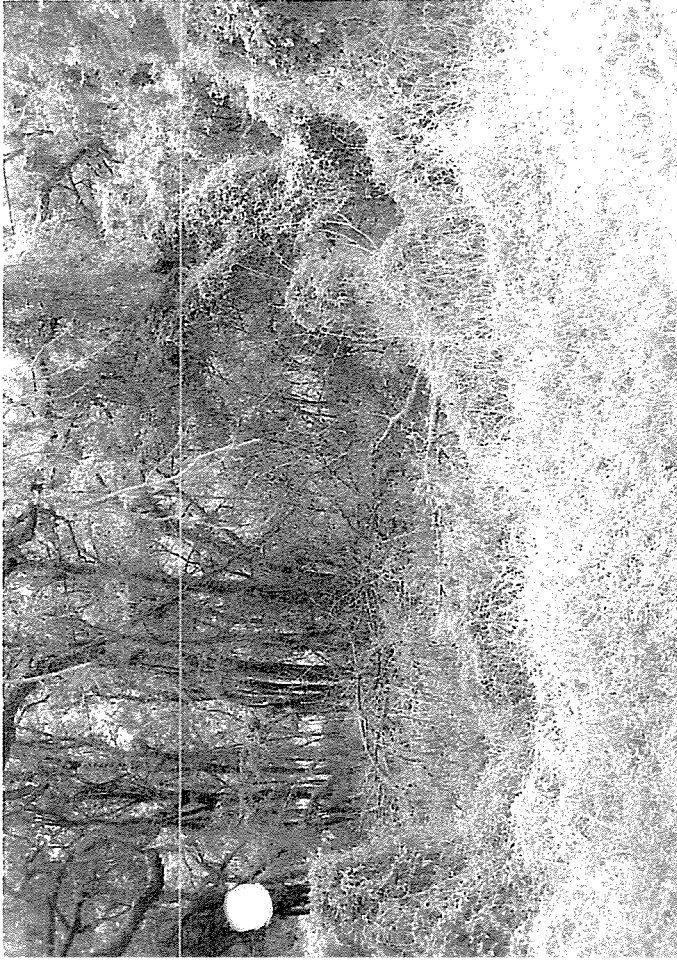




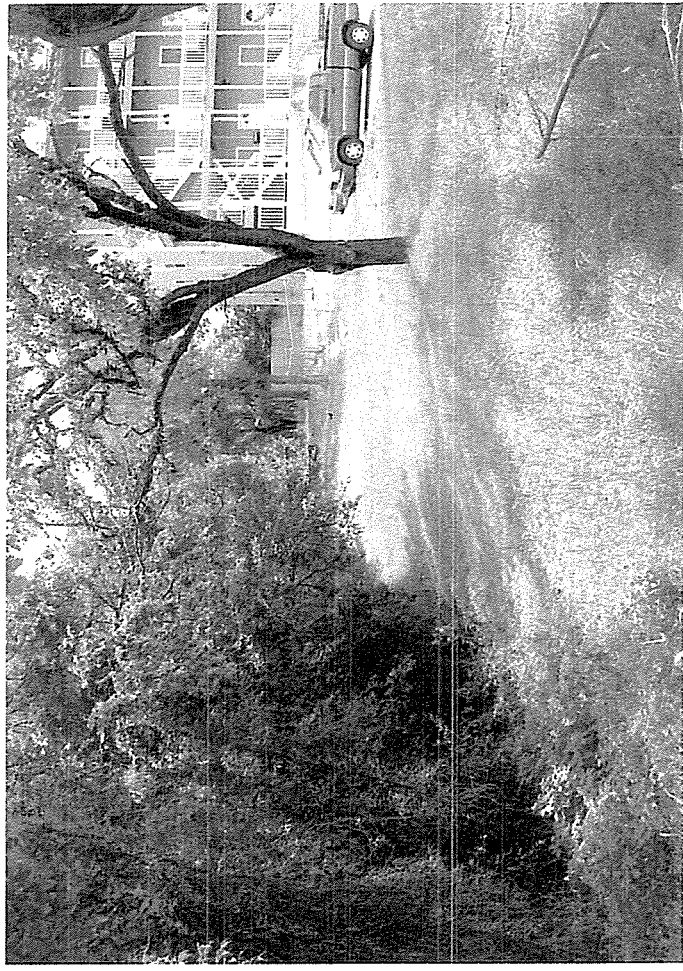




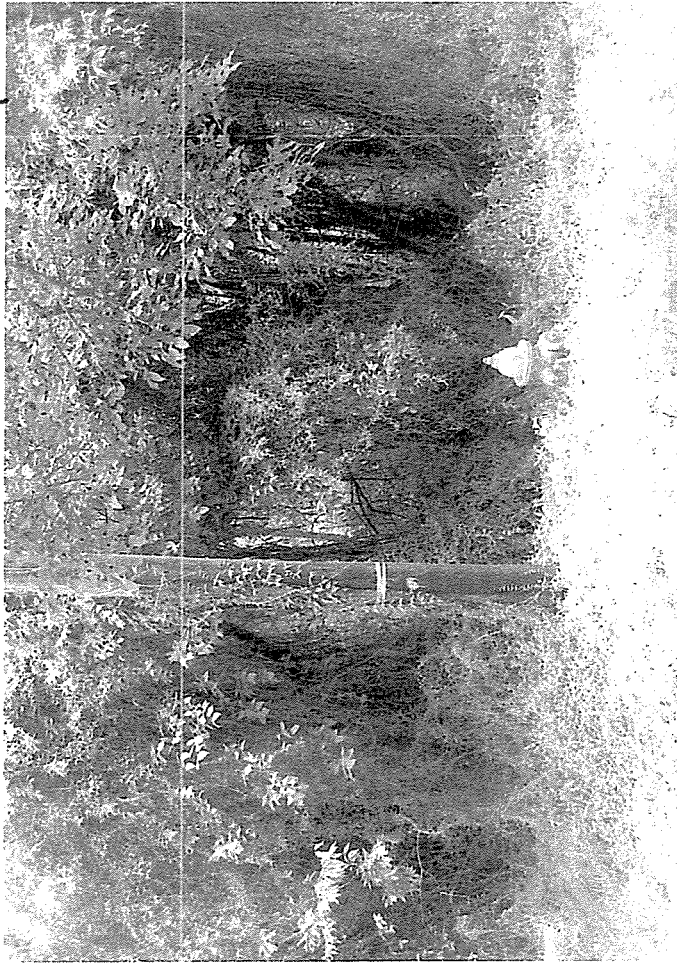
SHADE ALONG LB3 DR. LOOKING WEST (NORTH SIDE OF PROPERTY)



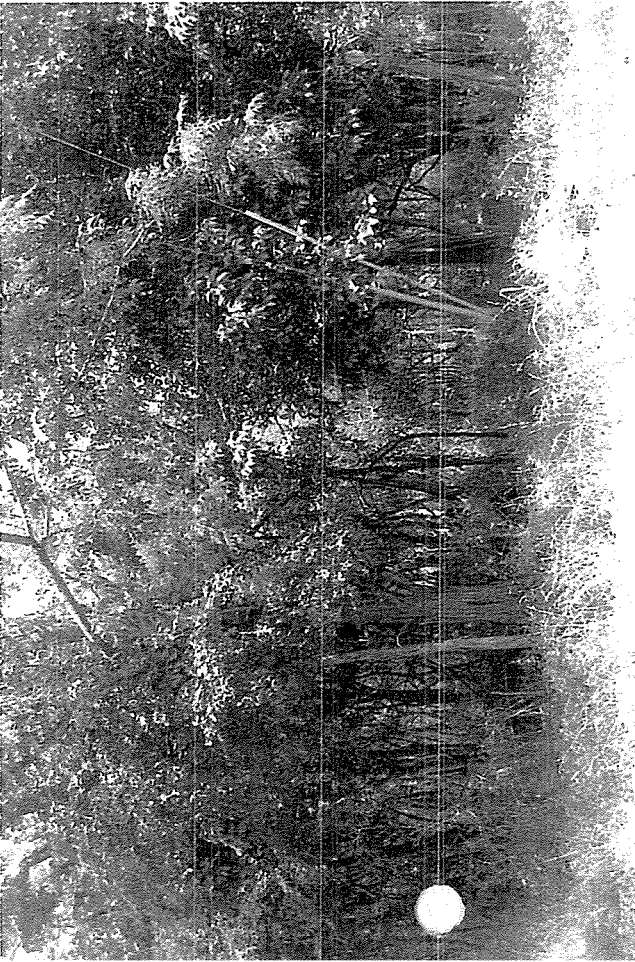
TREES IN NORTH PORTION OF PROPERTY @ LB3 DR.



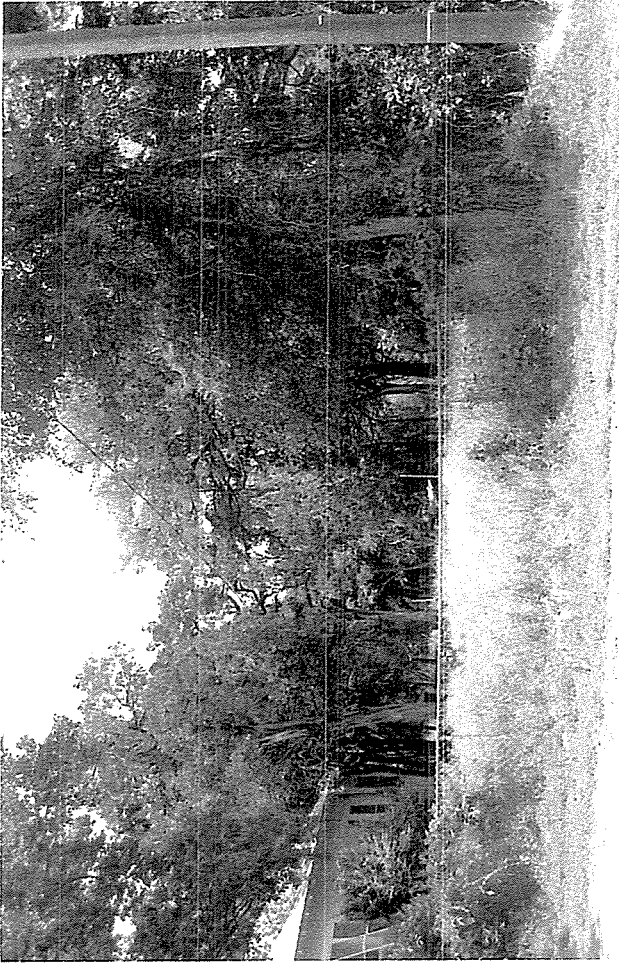
PEACH TREE ROW LOOKING SOUTH. TREES ON NW CORNER OF PROPERTY.



NW CORNER OF PROPERTY @ LB3 DR.



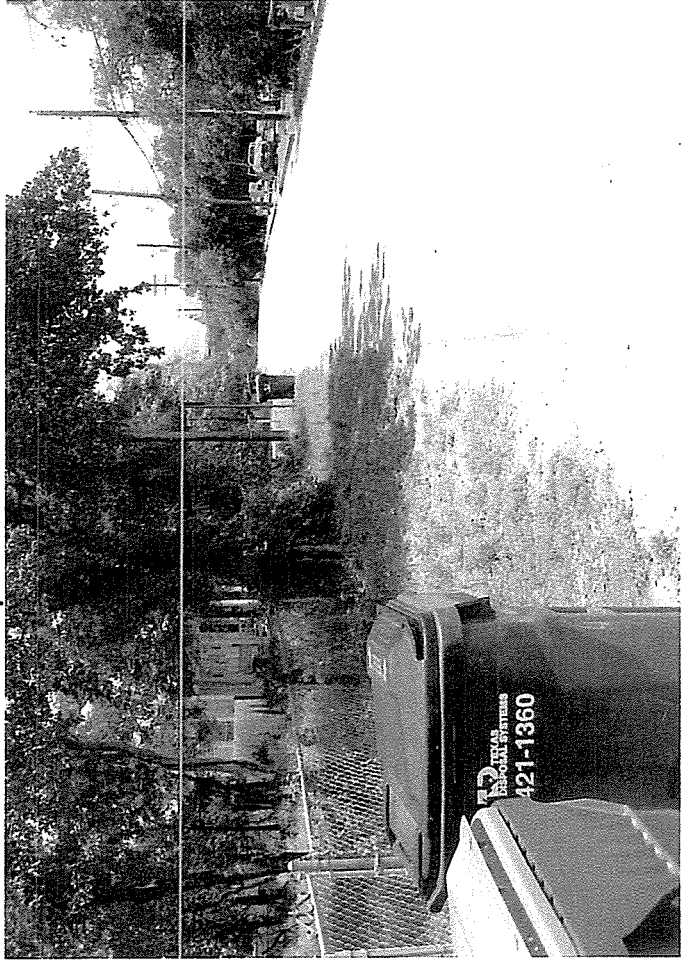
WEST SIDE OF PROPERTY - LOOKING NE.



SE CORNER OF PROPERTY - LOOKING NORTH.



WEST SIDE OF PROPERTY - LOOKING SE.



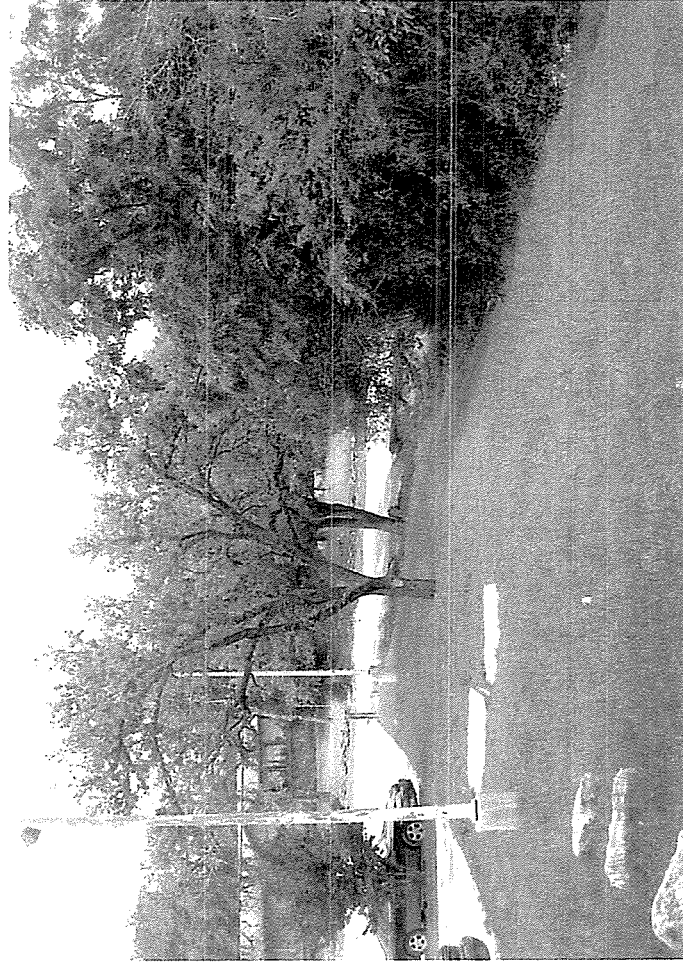
SW CORNER OF PROPERTY ALONG SEASTREE ROW LOOKING EAST. NO CED. CHESTNUT



INT. OF PEACHTREE & CHESTNUT LOOKING SOUTH.



APTS. ACROSS STREET FROM PROPERTY TO SOUTH



PEACHTREE ROW LOOKING NORTH @ INT. W/ LBT.



PEACHTREE ROW LOOKING NORTH - PROPERTY @ RT

President

River City Loans Inc.

Mr. Matthew Lewis, Assistant Director,
Department of Planning and Development
City of San Marcos Texas

RE: Owners Authorization for City of San Marcos Zoning Submittals.

Mr. Lewis:

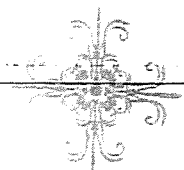
I hereby authorize Vincent Gerard & Associates Inc. to file all appropriate zoning documents and development applications on Lots 80 & 81, Third Division, Park Addition, and to represent our interest in the zoning change for this property with staff and at public hearings. Please contact me at (210) 844-7169 if there are any questions or concerns regarding this matter.

Sincerely

Don Fay Sr., Owners
River City Loans

23165 Hanging Oak
San Antonio, Texas 78266
210-844-7169

www.rivercityloans.com



Planning and Zoning Commission;

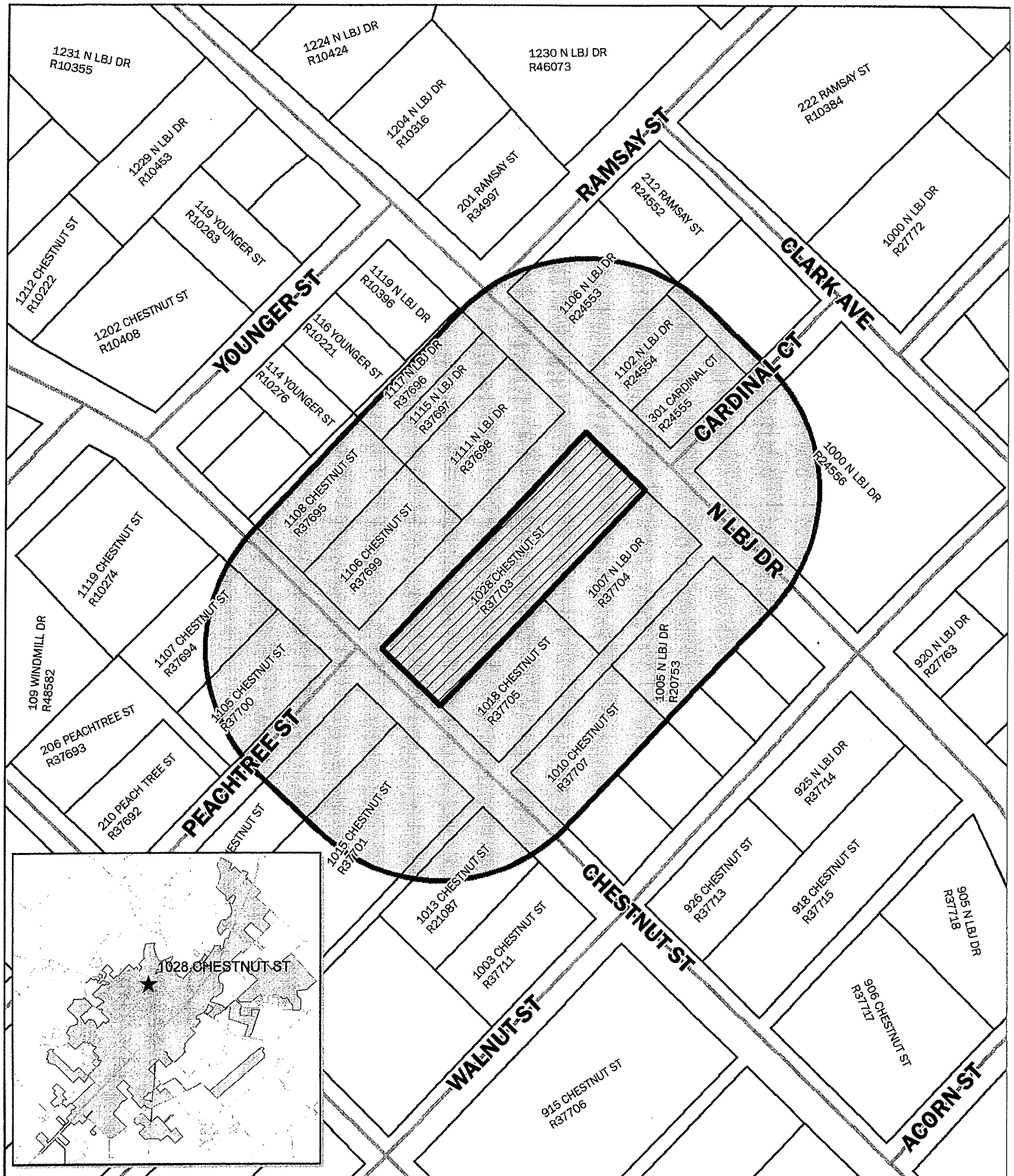
We are opposed to the changes being requested at 1028 Chestnut Street [LUA-10-08, ZC-10-11]. We own property adjacent to the proposed property, at 1111 N LBJ. The owner of the Chestnut property had recently requested to purchase Peach Tree Street next to the properties. We are opposed to that due to the fact that our utilities and the service access to our property is located on Peach Tree.

The LBJ/Chestnut area currently has a high level of high density housing. Accidents, traffic and parking issues in this area are well known. Allowing the rezoning from single to high density and low density to high density will only heighten these problems. The rezoning to high density would have a negative impact on the residents in the area, by adding more traffic and noise to an already congested area. The zoning change from SF-6 Single Family to MF-24 Multi Family would then set a precedent for all the SF-6 properties in the area to be rezoned in the same manner.


The lot that is currently zoned SF-6 has a single family home currently, which is being leased to a group of students who are not related, violating the current zoning. Contact was made to the city regarding the zoning violation. We have contacted the residents and owners about vehicles being parked on and around Peach Tree Street blocking access, we have received no response.

Warren Hoke

A handwritten signature in black ink, appearing to read 'W. Hoke', is written over the printed name 'Warren Hoke'.



LUA-10-08
ZC-10-11
Map Date: 06/23/10

 Notification Buffer
 (200 feet)

 Site Location

 Historic District

This map was created by Development Services
 for reference purposes only. No warranty is made
 concerning the map's accuracy or completeness.



0 55 110 220
 Feet

Zoning Change

ZC-10-11

1028 Chestnut Street



Administrative Summary:

Applicant: Vincent and Gerald and Associates
1715 Capital TX Highway
#207
Austin, Texas 78746

Property Owner: River City Loans LLC
23165 Hanging Oak
San Antonio, TX 78266

Notification: Public hearing notification mailed on July 17th.

Response: None as of July 22, 2010

Property/Area Profile:

Legal Description: Lots 80 and 81

Location: 1028 Chestnut

Existing Use of Property: Lot 80 is currently used as a Single Family House and Lot 81 is vacant

Proposed Use of Property: Multi-family apartments

Future Land Use Map: Lot 80 -Low Density Residential Lot 81- High Density Residential

Existing Zoning: SF-6

Proposed Zoning: MF-24

Utility Capacity: Water capacity is sufficient for the proposed development however currently there appears to be a "choke point" in the wastewater line that services the subject property. This could potentially cause a temporary delay in sewer availability. However the proposed Sink Creek Interceptor, scheduled for a completion date of Summer of 2011, will help alleviate the waste water challenges in this area of the City.

Sector: Sector 3

Area Zoning and Land Use Pattern:

	Zoning	Existing Land Use	Future Land Use
N of Property	-	The property is bounded by N. LBJ on the north	-
S of Property	-	The property is bounded by Chestnut Street on the south	-
E of Property	SF-6/ MU	Single Family Residential	Mixed Use/ Low Density Residential
W of Property	-	The property is bounded by Peachtree Street (currently an undeveloped Street)	

Planning Department Analysis

The applicant is requesting a zoning change for 0.721 acres, more or less, from SF-6 to MF-24.

The subject property is platted into two lots. Lot 80 fronts on Chestnut Street and is currently used as a single-family residential home. Lot 81 fronts on N. LBJ and is currently undeveloped. The request is being processed concurrently with a request to amend the future land use designation on Lot 80 from Low Density Residential to High Density Residential. Lot 81 has a future land use designation of High Density Residential.

The subject property is located approximately ¼ mile from the Texas State University campus. As is evident in the zoning and usage of the surrounding properties the subject neighborhood is currently experiencing a transition from what was once a mixture of residential uses to multi-family development. While it is within close proximity to the university and therefore ideal for the development of student housing both N.LBJ and Chestnut streets are also gateways into established single family residential neighborhoods.

Section 1.5.1.5 of the Land Development Code (LDC) establishes guidance criteria for use by the Planning and Zoning Commission to evaluate zoning changes. The consistency of this proposed change to the criteria is summarized below:

Lot 80

Evaluation		Criteria (LDC 1.5.1.5)
Consistent	Inconsistent	
	X	<p>Change implements the policies of the adopted Master Plan, including the land use classification on the Future Land Use Map and any incorporated sector plan maps</p> <p>A future land use map amendment is pending for this property. Furthermore the Horizons Master plan call for medium density and high density residential development to have direct access to at least collector width streets</p>
X		<p>Consistency with any development agreement in effect</p> <p>No development agreements are in effect for this property.</p>
	X	<p>Whether the uses permitted by the proposed change and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified</p> <p>The uses and standards applicable to the MF-24 zoning designation are compatible with the surrounding properties However due to the current condition of Chestnut Street the redevelopment of this site to a high-density use does not appear to be appropriate.</p>

Evaluation		Criteria (LDC 1.5.1.5)
Consistent	Inconsistent	
	X	<p>Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area</p> <p>There appears to be a "choke point" in the wastewater line that services the subject property. This could potentially cause a temporary delay in sewer availability.</p>
	X	<p>Other factors which substantially affect the public health, safety, morals, or general welfare</p> <p>The development of a high-density residential use on a residential street can have significant safety implications.</p>

The subject property is located on the corner of Peachtree Street and Chestnut Street. Peachtree Street is currently undeveloped and because the property is platted the development of the street would be at the expense of the City rather than the developer. Chestnut Street is classified and is designed as a residential street and has a ROW width of approximately 40 feet (2 lanes of traffic without sidewalks). The proposed change in zoning would facilitate the opportunity for infill development, however due to the nature of Chestnut Street the development of this parcel as high density residential is not compatible. Furthermore, while it is desirable to create a dense environment within walking distance to the university it is also important to create a neighborhood where there is a mixture of residential types.

While the requested zoning change is generally consistent with the surrounding land uses it is not consistent with all of the criteria listed above for a zoning change and is not consistent with the following policy statements outlined in the Horizons Master Plan:

- Policy LU-4.3: The City shall encourage medium and high density residential developments to have direct access to at least collector width streets to accommodate the traffic volumes and turning patterns generated by high concentrations of people. They should also be located near major arterials.
- Policy LU-5.6: The City shall not allow rezoning any property to a more intensive residential district without proof that the street system, utilities, drainage, and other requirements are adequate for the proposed density.
- Policy LU-3.22: The City shall recognize that different types of residential uses have different requirements for utilities, etc., and that land developed for one density may require more than rezoning to make it suitable for a higher density.
- Policy LU-3.4: The City shall provide, within the framework of the Future Land Use Plan, a wide choice of owner-occupied and rental housing types that will give adequate housing to families and individuals of all income levels.
- Policy LU-3.1: The City shall develop the residential areas of San Marcos according to the Future Land Use Plan so that future growth can be accommodated, a mixture of housing types and densities can be provided, and adverse impacts from traffic, environmental hazards and incompatible land uses can be avoided.

Staff recommends denial of the zoning request change for Lot 80.

Lot 81

Evaluation		Criteria (LDC 1.5.1.5)
Consistent	Inconsistent	
X		Change implements the policies of the adopted Master Plan, including the land use classification on the Future Land Use Map and any incorporated sector plan maps It is the intent of both the Sector 3 plan and the Horizons master plan to promote high density residential development within walking distance of the University. Furthermore this lot has a future land use designation of High Density Residential.
X		Consistency with any development agreement in effect No development agreements are in effect for this property.
X		Whether the uses permitted by the proposed change and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified The uses and standards applicable to the MF-24 zoning designation are compatible with the surrounding properties. Redevelopment of the property will trigger full compliance with the zoning requirements of the Land Development Code.
X		Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area There appears to be a "choke point" in the wastewater line that services the subject property. This could potentially cause a temporary delay in sewer availability.
X		Other factors which substantially affect the public health, safety, morals, or general welfare Staff has not identified any issues which substantially affect the public health, safety, morals or general welfare.

The subject property is located on the corner of Peachtree Street and N.LBJ. Peachtree Street, as indicated above, is currently undeveloped and because the property is platted the development of the street would be at the expense of the City rather than the developer. N.LBJ is classified a minor arterial roadway however the current design does not reflect the classification. N.LBJ street improvements, to include roadway expansion and bike and pedestrian improvements have been identified as a Capital Improvements Project .

The future land use designation of this property is high density residential and therefore the rezoning of this property to MF-24 would be in keeping with the intent of Horizons Master Plan. While there does appear to be topography/ drainage concerns on this property the development of this property would be required to meet all watershed protection and water quality requirements as outlined in the Land Development Code. As indicated above there appears to be a "choke point" in the wastewater line that services the subject property. This could potentially cause a temporary delay in the development of this property until sewer availability is demonstrated.

Based on the criteria above, staff believes the applicant's request is consistent with adopted policies and plans of the city regarding development in this area.

Staff recommends approval of the zoning change request for lot 81.

The Commission's Responsibility:

The Commission is required by law to hold a public hearing and receive public comment regarding the proposed zoning. After considering the public input, the Commission is charged with making an advisory recommendation to the City Council regarding the request. The City Council will ultimately decide whether to approve or deny the zoning change request. The Commission's advisory recommendation to the Council is a discretionary decision.

List of Attachments:

- Area zoning map
- Application
- Survey
- Notice
- List of Property Owners Notified

Prepared by:

Sofia Nelson

Senior Planner

July 22, 2010

Name**Title****Date**

DEVELOPMENT AGREEMENT
Paso Robles

This Development Agreement (this “**Agreement**”) is made and entered into as of the ____ of _____, 2010 (the “Effective Date”), by and between the City of San Marcos, Texas, a Texas municipal corporation (the “**City**”) and Carma Paso Robles LLC, a Texas limited liability company (“**Carma**”). The City and Carma are sometimes hereinafter referred to individually as “**Party**”, and collectively as the “**Parties**”. The Parties agree as follows:

Purposes and Consideration

WHEREAS, the City is a home rule municipality with an estimated population as of the Effective Date of more than 50,000; and

WHEREAS, Carma currently owns that certain 906.5 acre, more or less, parcel of land located in the extraterritorial jurisdiction (“ETJ”) of the City, Hays County, Texas, and more particularly described in **Exhibit “A”** (the “**ETJ Parcel**”), which exhibit is attached hereto and incorporated herein for all purposes; and

WHEREAS, Carma currently owns that certain 432.062 acre, more or less, parcel of land located in the City Limits of San Marcos, Hays County, Texas, and more particularly described in **Exhibit “B”** (the “**City Parcel**” and, together with the **ETJ Parcel**, hereinafter sometimes referred to as the “**Property**”), which exhibit is attached hereto and incorporated herein for all purposes; and

WHEREAS, Carma desires to develop the Property as a mixed-use retail, commercial, and residential development generally in accordance with the Concept Plan, as more particularly described in **Exhibit “C”** attached hereto and incorporated herein for all purposes (as amended from time to time as authorized by the PDD Regulations (defined in §1.03, below), the “**Concept Plan**”); and

~~WHEREAS, the City has entered into an interlocal agreement with Hays County pursuant to which the City has exclusive jurisdiction over subdivision regulations and platting within the City’s ETJ, and Hays County shall have and exercise no jurisdiction over such matters; and~~

WHEREAS, the City is authorized to make and enter into this written Agreement with Carma with respect to the ETJ Parcel in accordance with Subchapter G, Chapter 212, Local Government Code, to accomplish the following purposes:

- A. Extend the City's planning authority over the ETJ Parcel in accordance with the Concept Plan and the terms hereof under which certain uses and development of the ETJ Parcel are authorized;
- B. Authorize enforcement by the City of municipal land use and development regulations for the ETJ Parcel to the extent the same are consistent with the Concept Plan, the PDD Regulations and the terms hereof, and in the same manner the applicable regulations are enforced within the City's municipal boundaries.
- C. Authorize enforcement by the City of land use and development regulations for the ETJ Parcel other than those that apply within the City's boundaries, as may be agreed to by the Parties;
- D. Specify the uses and development of the ETJ Parcel before and after annexation, if annexation is agreed to by the Parties;
- E. Provide for infrastructure for the ETJ Parcel, including but not limited to streets and roads, street and road drainage, land drainage, and water, wastewater and other utility systems; and
- F. Include other lawful terms and considerations for the ETJ Parcel the Parties consider appropriate.

WHEREAS, the City is authorized to make and enter into this written Agreement with Carma with respect to the City Parcel and the ETJ Parcel (after annexation thereof) to accomplish the following purposes:

- A. To rezone the City Parcel and zone the ETJ Parcel (after annexation thereof) in accordance with the Governing Regulations (as defined in §1.03 below);
- B. To process and approve development applications for the City Parcel and the ETJ Parcel (after annexation thereof) provided such applications are in substantial compliance with the Governing Regulations,
- C. To enforce municipal land use and development regulations for the City Parcel and the ETJ Parcel (after annexation thereof) to the extent the same are consistent with the Governing Regulations,
- D. To specify the uses and development of the City Parcel and the ETJ Parcel (after annexation thereof) provided such uses and development are consistent with the Governing Regulations;
- E. To provide for infrastructure for the City Parcel and the ETJ Parcel (after annexation thereof), including but not limited to streets and roads, streets and road drainage, land drainage, water, wastewater and other utility systems the Parties consider appropriate; and
- F. To include such other terms and considerations for the City Parcel and the ETJ Parcel (after annexation thereof) the Parties consider appropriate.

WHEREAS, the City has the authority to adopt tax increment financing pursuant to the Tax Increment Financing Act, TEX. TAX CODE, Ch. 311, as amended (hereinafter sometimes "the Act") for areas within its jurisdiction designated by the City as reinvestment zones;

WHEREAS, in accordance with the Act, the City desires and plans to create a tax increment reinvestment zone entitled "Reinvestment Zone No. [Four], City of San Marcos, Texas" (hereinafter sometimes "the TIRZ" or "TIRZ") which will include the Property.

NOW THEREFORE, the City and Carma in consideration of the premises, the mutual covenants and agreements of the Parties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, agree as follows:

ARTICLE I **General Terms**

1.01 Annexation and Zoning. Upon approval of this Agreement, Carma authorizes the City to immediately initiate the full purpose annexation of the ETJ Parcel. The City-initiated annexation process shall be concurrently accompanied by a City-initiated application to establish a Planned Development District "PDD" zoning classification for both the ETJ Parcel (after annexation thereof) and the City Parcel. The PDD zoning shall be approved and shall reflect the land uses and development regulations specified in the Concept Plan and the PDD Regulations (hereinafter defined below). Notwithstanding annexation of the ETJ Parcel, the terms, rights, duties, and obligations of this Agreement shall remain in full force and effect for the Initial Term of this Agreement and any extensions thereof, unless this Agreement is terminated per Section [5.01] below.

1.02 Concept Plan. The City hereby approves the use and development of the Property in accordance with the Concept Plan, which is incorporated into the PDD Regulations, and specifically approves the land use designations as more particularly described and identified on the Concept Plan and the PDD Regulations. The Concept Plan may be amended from time to time in accordance with procedures specified in the PDD Regulations.

1.03 Governing Development Regulations. (a) Development of the Property shall be governed by: (i) the Concept Plan; (ii) the City's Land Development Code (the "LDC") in effect on October 30, 2008 (the "Submittal Date"); (iii) the PDD Zoning Regulations for the Property adopted in accordance with this Development Agreement attached hereto and incorporated herein as "Exhibit D" (the "**PDD Regulations**"), and (iv) construction plans and final plats for portions of the Property that are approved from time to time by the City (the "**Approved Plats**"). The Concept Plan, the LDC, the PDD Regulations and the Approved Plats shall hereinafter be referred to collectively as the "**Governing Regulations**." It is further agreed and understood that no ordinance or regulation adopted by the City after the Submittal Date shall in any manner impair Carma's rights under this Agreement provided that: (1) any ordinance or regulation

exempted by Chapter 245 of the Texas Local Government Code may be enforced on the Property; and (2) ordinances or regulations adopted pursuant to a requirement of State or Federal law may be enforced on the Property.

(b) Plat Approval. A preliminary plat and final plat for all or any portion of the Property shall be approved by the City if such plat is in substantial compliance with the Governing Regulations. Carma and the City agree that the approved land uses in each final plat of portions of the Property shall be as specified on the Concept Plan, as may be amended from time to time as provided in the PDD Regulations, unless otherwise mutually agreed upon by both the City and Carma.

(c) Conflicts. ~~In the event of a conflict between the LDC or the PDD Regulations and the Concept Plan, the Concept Plan shall control.~~ In the event of a conflict between the LDC and the PDD Regulations, the PDD Regulations shall control. In the event of any conflict between the LDC or the PDD Regulations and any Approved Plat, the Approved Plat shall control. In the event of any conflict between the LDC or the PDD Regulations and this Agreement, this Agreement shall control.

1.04 Other City Ordinances. Except as expressly excluded or made inapplicable by the Governing Regulations or this Agreement, all other ordinances of the City shall apply to the Property.

1.05 Enforcement. The Parties agree that the City shall be entitled to enforce all applicable municipal land use and development regulations for the Property that are not in conflict with the approved Governing Regulations and this Agreement in the same manner that such land use and development regulations are enforced within the entirety of the City's corporate boundaries. The City shall have the right to enforce the Governing Regulations and this Agreement.

1.06 Streets. Except as provided by this Agreement or the Governing Regulations, or as otherwise agreed to in writing by the Parties, to the extent any public streets are built within the Project (hereinafter defined), the Parties agree that such streets shall be built to the City's construction standards in effect on the Submittal Date. Except as may otherwise be agreed to in writing by the Parties, all other streets or driveways shall be constructed in accordance with the Governing Regulations.

Roadways proposed to extend beyond this Property shall afford access to the adjacent properties. Right of way dedication for roadways proposed for extension beyond the Property shall extend to the Property boundary and shall allow for public street, trail, sidewalk or bikeway access to adjacent developed or undeveloped tracts.

Additionally, Carma and the City agree to the following with respect to the planned minor arterial along the western boundary of the Property as shown on Exhibit 2 (Land Use Plan) to the PDD Regulations:

- a. City agrees to purchase, condemn or otherwise acquire the necessary right of way for the portions of said planned minor arterial between the Property and McCarty Lane;

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0.75"

b. After the City acquires the necessary right of way for the portions of the planned minor arterial between the Property and McCarty Lane and upon receipt of the certificate of occupancy for the 1726th dwelling unit for the Paso Robles Project, Carma agrees to:

1. Dedicate to the public at least 55 feet of right of way for the portions of the planned minor arterial within the Property south of the planned intersection with Centerpoint Road; and
2. Dedicate to the public at least 55 feet of right of way for the portions of the planned minor arterial within the Property north of the planned intersection with Centerpoint Road; and
3. Construct the portions of the planned minor arterial within the Property north of the planned intersection with Centerpoint Road. Carma shall only be obligated to construct two of the proposed 4 lanes of the planned minor arterial.

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1.07. —Proposed San Marcos Outer Loop (FM 110). The City agrees to initiate a modification to the City's Thoroughfare Plan to review the need for the proposed alignment of FM 110.

1.08 Drainage Facilities. Except as may be provided by the Governing Regulations, this Agreement or as otherwise agreed to in writing by the Parties, all drainage and detention facilities shall be built in accordance with all applicable drainage and detention requirements of the City in effect on the Submittal Date of this Agreement.

1.09 Impervious Cover and Density. Impervious cover for the portions of the Property within the Recharge Zone of the Edwards Aquifer shall comply with the limitations and requirements of the LDC and the other applicable provisions of the Governing Regulations. Density for the portions of the Property within the Recharge Zone of the Edwards Aquifer shall comply with the PDD and other applicable requirements of the Governing Regulations.

1.10 Water Facilities. Except as may be provided by the Governing Regulations, this Agreement or as otherwise agreed to in writing by the Parties, all internal water improvements and any off-site facilities shall be built in accordance with the applicable requirements of the utility provider.

1.11 Wastewater Facilities. Except as provided by the Governing Regulations, this Agreement or as otherwise agreed to in writing by the Parties, all internal wastewater improvements and any off-site facilities shall be built in accordance with the applicable requirements of the utility provider.

~~4.12 City~~ 1.12 City Water and Wastewater Service to Project. The City represents it has and will continue to have adequate treatment capacity for the projected ~~413~~950 service units for build out of the Project. City and Carma acknowledges that Texas Commission for Environmental Quality regulations (30 TAC § 305.126) imposes certain requirements to plan for and construct additional treatment plant capacity and/or collection facilities for the City's Treatment Plant when average daily or annual average flows reach certain levels.

1.13 Conveyance of City Reclaimed Water to Property. The Parties agree that the use of reclaimed water from the City's Treatment Plant ("Reclaimed Water") for irrigation purposes within the Project is beneficial to both the City and Carma. Subject to reimbursement of eligible project costs from the TIRZ as provided in Section 3.01 below and in Exhibit F — attached hereto, or from the City's Capital Improvements Project fund (if eligible) as provided in Section 3.02 below. Carma agrees to bear the costs of bringing Reclaimed Water to the Property by constructing the necessary improvements between the City's existing eighteen inch (18") reclaimed water line east of IH 35 approximately 7200 linear feet west to a location on the eastern boundary of the Property (the "Point of Delivery") as per Exhibit G. The City agrees to provide, if available, to Carma up to 1,200,000 gallons of Reclaimed Water each day (the "Maximum Quantity") at the rates specified below ~~which~~ below which may be taken in smaller quantities, through delivery facilities ("Delivery Facilities") to be constructed as provided herein and in the Reclaimed Water Permit. ~~City agrees that Carma shall have first priority for availability of Reclaimed Water after taking into account the City's existing contractual commitments to third parties as of the Effective Date. To the extent Carma does not use the Maximum Quantity each day and City desires to sell or otherwise convey unused amounts of reclaimed water to third parties, City may do so after giving written notice to Carma of City's desire to sell unused amounts of reclaimed water to a third party and giving Carma a reasonable amount of time to elect to purchase up to the Maximum~~ Quantity. Carma may purchase additional quantities of Reclaimed Water from the City in excess of the Maximum Quantity at the City's then prevailing rate to the extent additional quantities are available from the City's Treatment Plant and deliverable through the Delivery Facilities. Higher flow rates may be allowed by the City if system conditions permit. Use of reclaimed water shall be in accordance with terms and conditions of the Permit issued by the City and in compliance with all applicable State and federal requirements.

City agrees that the Reclaimed Water supplied hereunder will conform to the standards for Type I reclaimed water contained in Title 30, Part I, Section 210.33 of the Texas Administrative Code.

The City agrees to cooperate with Carma with respect to acquiring needed rights of way and easements for the Delivery Facilities for the transmission of Reclaimed Water from the City's existing 18 inch reclaimed water pipeline to the Point of Delivery. Subject to City review and approval, Carma will have plans and specifications for the Delivery Facilities prepared by a professional engineer registered in Texas and ~~the City~~ will submit these plans and specifications for review and approval by the Texas Commission on Environmental Quality ("TCEQ"). The Delivery Facilities will include metering equipment provided by ~~the City.~~ Carma and will satisfy the City's metering equipment

requirements. Carma will be responsible for the design, construction, and maintenance of facilities on the Property.

For the first 5 years beginning with the completion and acceptance of the Delivery Facilities, Carma will pay the City at the City's billing offices in San Marcos, Texas within 30 days after receipt of the itemized statement each month: (a) a rate of \$0.80 per 1000 gallons of Reclaimed Water for the first year grow in period for the golf course and (b) at a rate of \$1.00 per 1,000 gallons of Reclaimed Water furnished thereafter for the next 4 years (the "Initial Rate"). After such 5 year period, Carma will pay the City the prevailing rate for reclaimed water as determined by the City's governing body.

The Parties acknowledge and agree that the golf course is common Project property and that, under certain circumstances (such as the construction of a golf course on the Property or the creation of a homeowners association), Carma, with the City's consent, which shall not be unreasonably withheld, may elect to assign all or a portion of its rights to the City's reclaimed water as provided hereunder to a third party for use within the Property on terms mutually acceptable to the City, Carma and such third party. The Parties acknowledge and agree that the rights to the City's reclaimed water under this Agreement is for the Project only and may not be assigned, transferred or otherwise used on land other than the Project Property.

The Parties agree and understand that any assignment of Carma's rights hereunder shall comply with all applicable TCEQ, City and other governmental requirements and procedures.

ARTICLE II

The Project

2.01 Description. The "Project" or the "Paso Robles Project" as those terms are used in this Agreement means the development of PASO ROBLES COMMUNITY located on the Property. The Project is the development of the Property into a mixed use residential, commercial, and retail project as depicted shown on the Concept Plan and described in the PDD Regulations and the construction of the necessary utility, street, street lighting and drainage infrastructure to serve such development as shown on the Concept Plan and described in the PDD Regulations. The Project includes approximately 1338.5 acres.

The Project shall include the construction of all public and private streets internal to the Project, if any, as well as certain driveways, boundary street improvements, sidewalks, drainage and other infrastructure improvements within or adjacent to the boundaries of the Property as are identified in the Concept Plan or on any Approved Plat or any site plan submitted to the City for any portion of the Property.

2.02 Permitted Uses. The Concept Plan for the Property designates the Property as a "PDD", which shall include all of the uses authorized on the Property, all of which may be located on any portion of the Property without any further requirement or

specific or conditional use permit except as otherwise provided by the Governing Regulations. Uses designated as "Permitted Uses" shall be permitted by right without any further requirements for additional specific or conditional use approvals,

2.03 Buildings and Other Improvements. Building use, location, design, size, dimension, height, building setbacks, building materials, landscaping, screening, fencing, lighting, required parking, signage, and other improvements for all portions of the Property shall be governed by the Governing Regulations.

2.04 Phasing. The development of the Property, or portions thereof, may be phased into one or more phases as determined by Carma, so long as related infrastructure is adequately in place.

2.05 Third Party Inspection Services. The Parties acknowledge that timely City inspection of street, drainage, and utility infrastructure for the Project is of paramount importance. The Parties hereby agree that Carma can request that the City retain third party inspection services specifically dedicated to perform inspection services for the Project. City agrees to provide advance notice to Carma of the identity of any third party inspection services proposed to be retained by the City. Any such qualified third party inspection services shall be retained by the City pursuant to such terms and conditions the City deems appropriate and necessary. Carma hereby agrees to reimburse the City for all costs and expenses incurred by the City for inspection services within 30 days of receipt of a written invoice(s) from the City.

2.06 Golf Course. As part of the Project, a golf course shall be developed on the Property and the golf course shall be designed and operated as per the applicable requirements of the PDD Regulations. ~~Should a golf course be developed, as generally identified on the Concept Plan and PDD Exhibits, the design and operation of the golf course shall incorporate as many of the standards and specifications related to the Audubon International Cooperative Sanctuary Program and the following principles, which may include:~~

- ~~• To enhance the local community ecologically and economically;~~
- ~~• To develop an environmentally responsible golf course that is economically viable;~~
- ~~• To offer and protect habitat for wildlife and plant species;~~
- ~~• To recognize that the golf course must be developed and managed with consideration for unique conditions of the ecosystem, including the Edwards aquifer, of which it is a part;~~
- ~~• To provide important green space benefits;~~
- ~~• To use natural resources efficiently;~~
- ~~• To respect adjacent land use when planning, constructing, maintaining, and operating the golf course or open space;~~
- ~~• To create desirable playing conditions through best management practices that preserve environmental quality;~~

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- ~~_____~~ To support ongoing research to scientifically establish new and better ways to develop and manage the golf course in harmony with the environment;
- ~~_____~~ To document outstanding development and management practices to promote more widespread implementation of environmentally sound golf; and;
- ~~_____~~ To educate golfers and potential developers about the principles of environmental responsibility and to promote the understanding that environmentally sound golf courses are quality golf courses.

Additionally, the design and operation of the golf course shall generally conform with the principles and practices identified in the publication: *Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses January 2007*. (<http://lee.ifas.ufl.edu/Hort/GardenPubs/AZ/Golf%20BMP.pdf>)

Article III

Creation of TIRZ; Reimbursement of Project Costs from TIRZ or Other Eligible Sources of Funds

3.01 TIRZ. Carma anticipates that it will design, construct and finance, or cause to be designed, constructed, and financed, the public infrastructure and other improvements necessary for development of the Property through the TIRZ. A list of potential infrastructure and improvements is attached hereto as Exhibit F____. In furtherance of this objective, the City and Carma shall undertake the following actions:

- (a) Creation of the TIRZ. The TIRZ shall include the real property described in Exhibit "H" attached hereto (the "TIRZ Boundaries"). Carma shall, and shall cause the owners of other real property to be included within the TIRZ Boundaries to petition the City to designate and create a tax increment reinvestment zone within the TIRZ Boundaries pursuant to the Act. Upon finalization of the TIRZ Project Plan and Financing Plan to the satisfaction of the City and satisfaction of all other conditions precedent contained in the Act, including the holding of hearings and giving of presentations, the City may adopt an ordinance authorizing creation of the TIRZ to be designated as "Reinvestment Zone No. 4, City of San Marcos, Texas", the boundaries of which shall be the TIRZ Boundaries. The term of the TIRZ shall be the later of fifteen (15) years or such time as all TIRZ related debt is retired.

____ 3.02 Reimbursement From Other Eligible Sources of Funds. Notwithstanding anything in this Agreement to the contrary, the City and Carma may agree to reimburse Carma for portions of Carma's eligible expenditures for Project Costs from other eligible sources of funds, including but not limited to the City's Capital Improvements Program funds, upon such terms as the City and Carma may agree.

ARTICLE IV

Assignment

4.01 **Assignment.** As of the Effective Date, Carma owns the Property. Carma may assign its rights and obligations under this Agreement to any third party ~~party~~ (ies) after having first obtained the prior written consent of the City and, if applicable, ~~the, the~~ TIRZ Board hereto; provided however that a written copy of said assignment shall be delivered to the City. Notwithstanding the above, no prior written consent shall be required for Carma to sell, lease, grant interests in or rights to or otherwise transfer or encumber portions of the Property that it owns, together with the assignment of all development rights and obligations relating to such portions of the Property that it owns contained in this Agreement. The terms of this Agreement shall be covenants running with the land and binding on successors and assigns.

ARTICLE V

Term, Authority, and Vesting of Rights

5.01 Term.

___(a) **Initial Term.** The initial term (the “Initial Term”) of this Agreement will commence on the Effective Date and continue for 15 years thereafter.

___(b) **Extensions.** After the Initial Term, the Agreement may be extended for successive periods (any such extension not to exceed 15 years) as to all of the Property by mutual written agreement of the City and Carma or only as to a portion of the Property by the mutual written agreement of the City and Carma of only the portion of the Property affected by and described in such agreement of extension. The total duration of the Agreement, including the Initial Term and all extensions, shall not exceed 30 years (the Initial Term as extended by any extensions, the “Term”).

(c) **Expiration.** After the Term, this Agreement will be of no further force and effect, except that termination will not affect any right or obligation arising from Project approvals previously granted, or any entitlement relating to the Project assigned under Chapter 245, Local Government Code.

(d) **Termination or Amendment.** This Agreement may be terminated or amended as to all of the Property or a portion thereof at any time by mutual written agreement of the City and Carma.

5.02 **Authority.** This Agreement is entered into, in part, under the statutory authority of Section **212.172** of the Local Government Code and the applicable provisions of the Texas Constitution and the laws of the State of Texas. The Parties intend that this Agreement authorize the annexation of the ETJ Parcel as provided in Section 1.01 of this Agreement; authorize certain land uses and development on the Property; provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Property to the City.

5.03 Vesting of Rights. The City acknowledges that Carma has initiated the subdivision and development process for the Project. The City agrees that, in accordance with Chapter 245 of the Local Government Code, the City will consider any further approvals necessary for the Project based solely on the Governing Regulations and this Agreement.

5.04 Carma's Right to Continue Development. In consideration of Carma's agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Project, or (b) any land use or development regulation that limits the rate or timing of land use approvals for the Project including but not limited to preliminary plans, final plats, site plans, building permits, certificates of occupancy, or other necessary approvals for the Project. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing, or sequencing of development or construction of all or any part of the Project will apply to the Property if such moratorium, restriction, or other limitation conflicts with this Agreement or would have the effect of increasing Carma's obligations or decreasing Carma's rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency. Nothing herein shall require the City to violate State or Federal law.

5.05 Equivalent Substitute Obligation. If any Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, changed circumstances or subsequent conditions that would legally excuse performance under this Agreement, or any other reason beyond the Party's reasonable and practical control, the Parties will cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.

5.06 Cooperation. The Parties agree to execute and deliver all such other and further documents or instruments and undertake such other and further actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

5.07 Litigation. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any action taken by the parties hereunder, Carma and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop, or otherwise affect the

development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court or competent jurisdiction. The City agrees not to stipulate or agree to the issuance of any court order that would impede or delay the City's processing or issuance of approvals for the Project.

ARTICLE VI

Miscellaneous

6.01 Default. Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other Party. Upon the passage of thirty (30) business days without cure of the default, such Party shall be deemed to have defaulted for all purposes of this Agreement. In the event of a non-cured default, the non-defaulting Party shall have all the rights and remedies available under applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement, or to enforce the defaulting Party's obligations under this Agreement by specific performance.

6.02 Governmental Powers; Waiver of Immunity. It is understood that by execution of this Agreement the City does not waive or surrender any of its governmental powers, immunities or rights, except as specifically waived pursuant to this Section 6.02. The City waives its governmental immunity from suit and liability only as to any action brought by a Party to pursue the remedies available under this Agreement and only to the extent necessary to pursue such remedies. Nothing in this Section 6.02 shall waive any claims, defenses or immunities that the City has with respect to suits against the City by persons or entities not a party to this Agreement.

6.03 Applicable Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Texas. Venue shall be in Hays County, Texas.

6.04 Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees from the other Party. The amount of fees recoverable under this paragraph may be set by the court in the trial of the underlying action or may be enforced in a separate action brought for that purpose, and any fees recovered shall be in addition to any other relief that may be awarded.

6.05 Notices. Any notice to be given hereunder by any Party to another Party shall be in writing and may be affected by personal delivery or by sending said notice by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed to:

City Manager
City of San Marcos

630 E. Hopkins Street
San Marcos, Texas 78666
(512) 393-_____ (fax)

Any notice mailed to Carma shall be addressed to:

Carma Paso Robles LLC
Attn: Shaun Cranston
9737 Great Hills Trail, Suite 260
Austin, Texas 78759
(512) 391-1333 (fax)

With copies to:

Carma Paso Robles LLC
C/o Carma Inc.
7315 – 8th Street N.E.
Calgary, AB T2E 8A2
Attn: Secretary
Fax: (403) 231-8960

And

DuBois, Bryant & Campbell, LLP
Attn: E. Scott Lineberry
700 Lavaca, Suite 1300
Austin, Texas 78701
Fax: (512) 457-8008

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

6.06 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written understandings or representations of the Parties with respect to the subject matter herein contained.

6.07 Severability. If any sentence, section, subsection, clause, phrase, part or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect the same shall not affect any other provisions of this Agreement as a whole, or any part thereof, other than the part declared to be invalid, illegal or unenforceable.

6.08 Interpretation. This Agreement shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity hereof. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular.

Each defined term herein may be used in its singular or plural form whether or not so defined.

6.09 Authority. The City represents and warrants that this Agreement has been approved and duly adopted by the City Council of the City in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Carma represents and warrants that this Agreement has been approved by appropriate action of Carma and that the individual executing this Agreement on behalf of Carma has been authorized to do so. Carma further represents and warrants that the lien holder of record, if any, has consented to terms of the agreement.

6.10 Recordation. Pursuant to the requirements of Section 212.172(f), Local Government Code, this Agreement shall be recorded in the deed records of Hays County, Texas. This Agreement shall be binding upon: (a) the Parties; (b) the Parties' assignees; (c) the Property; and (d) future owners of all or any portion of the Property. Notwithstanding the foregoing, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots.

6.11 List of Exhibits.

- Exhibit "A" - Metes and bounds description of ETJ Parcel
- Exhibit "B" - Metes and bounds description of City Parcel
- Exhibit "C" - Concept Plan
- Exhibit "D" - Development Standards
- Exhibit "E"- Reimbursement Schedule;
- Exhibit "F" List of Public Infrastructure and Improvements;
- Exhibit "G" -Reclaimed Water Line Route and Point of Delivery
- Exhibit "H" Metes and Bounds Description of TIRZ Boundaries

6.12 Counterpart Originals. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

EXECUTED on the dates set forth in the acknowledgments below to be effective
| for all purposes as of the Effective Date noted on Page 1 of ~~this~~of this Agreement.

CARMA PASO ROBLES LLC

By: CARMA SOUTH INC., its Sole Member

By: _____
Name: _____
Title: _____

Date of Execution: _____, 2010

CITY OF SAN MARCOS, TEXAS

By: _____
Name: _____
Title: _____

Date of Execution: _____, 2010

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2010, by
_____, _____ of Carma South Inc., a Delaware
corporation, on behalf of such corporation in its capacity as the sole member of Carma
Paso Robles LLC, a Texas limited liability company, on behalf of such limited liability
company.

Notary Public in and for the State of Texas

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2010, by
_____, _____ of Carma South Inc., a Delaware
corporation, on behalf of such corporation in its capacity as the sole member of Carma
Paso Robles LLC, a Texas limited liability company, on behalf of such limited liability
company.

Notary Public in and for the State of Texas

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2010, by
_____, _____ of _____

Notary Public in and for the State of Texas

Memo



To: Planning Commission Chair Bishop and Commissioners

From: Abigail Gillfillan
Planner

Date: July 22, 2010

Re: A determination of the appropriate land use designations for charity gaming facilities within the city limits

As per the commission's direction at the July 13th Planning and Zoning Commission meeting, staff has reviewed the appropriate land use designation for gaming facilities within the City Limits. Staff is recommending that this land use classification be added to the land use matrix as a conditional use in both the General Commercial (GC) and Heavy Commercial (HC) zoning districts. Staff is also recommending that a definition of gaming facilities be added to Chapter 8 of the Land Development Code. Following is a proposed definition of a charity gaming facility and a description of the characteristics of charity gaming facilities that make it appropriate for the GC and HC zoning designations.

The proposed definition for a charity gaming facility includes:

the use of any electronic computerized video game machine that, upon the insertion of cash, is available to play a video game authorized by the lottery commission, and which uses a video display and microprocessor in which, by chance, the player may receive free games or credits that can be redeemed for cash, and in which a pre-determined percentage of the proceeds goes to a charitable organization. This definition shall include any game or device that is commonly known as or considered to be a video gambling machine.

The purpose of the GC zoning district is to "provide locations for limited (light) commercial and service-related establishments, such as wholesale product sales, automotive supply stores, veterinary services, and other similar limited commercial uses. The commercial uses within this district will have operational characteristics that are generally compatible with the CC, Community Commercial District." The purpose of the HC zoning district is to "provided locations for more intense commercial and service-related establishments than are generally permitted within the GC, General Commercial District, such as mini-warehouse, auto-body repair shops, lumber yards, and other similar heavy commercial uses. The commercial uses within this district will have operation characteristics that are generally incompatible with residential and office uses, as well as some uses in the CC, Community Commercial District."

At this time staff is recommending that the proposed use be conditional in both of these zoning districts so that any nuisances that may arise from this use can be assessed on an ongoing basis. The nature of the proposed use, gaming facilities, is most appropriate for the two commercial categories listed above due to the hours of operation. These facilities can be open at very late hours that are not conducive to a location adjacent to residential uses.

The conditional use process allows the commission an opportunity for periodic review of the operations to sort out any issues that may arise. The characteristics of a charity gaming facility that should be monitored include:

- The size of the facility in square feet and number of terminals
- The hours of operation
- Proximity to residential uses
- On-premise consumption of alcohol
- Percentage of charitable pay-outs



DEVELOPMENT
SERVICES-PLANNING

MEMO

TO: PLANNING AND ZONING COMMISSION
THRU: MATTHEW LEWIS, ASSISTANT DIRECTOR OF DEVELOPMENT SERVICES
FROM: SOFIA NELSON, SENIOR PLANNER
DATE: JULY 20, 2010
RE: **TRANSPORTATION MASTER PLAN/ THOROUGHFARE PLAN**

Background

The Transportation Master Plan is a detailed plan that provides a framework for the development of an efficient transportation system. The City adopted the current Transportation Master Plan in 2004. The master plan includes the following:

- An inventory of existing transportation conditions
- Travel Demand Modeling
- Functional classification of roadways (freeways, arterials, collectors, and local streets)
- A Bicycle and Pedestrian Plan
- A financial plan that estimates cost of improvements and identifies funding sources

The Transportation Master Plan provides the policy basis for how transportation funding is spent and what projects or programs the city focuses on to provide transportation services to its citizens.

The Thoroughfare Plan is a general plan for guiding transportation improvements to the City. The primary objective of the plan is to ensure the appropriate alignments of roadways and the reservation of adequate right-of-way. The Thoroughfare Plan is coordinated with the Future Land Use Plan and provides a mechanism for roadways expansions and new roadways as property is developed.

The purpose of this update is the following:

- Adopt the Institute of Transportation Engineers (ITE) Context Sensitive Solutions Manual to the Thoroughfare Plan
- Add the extension of Leah Avenue to the Transportation Master Plan
- Remove a portion of loop 110 from the Transportation Master Plan

ITE Context Sensitive Solutions Manual

ITE Context Sensitive Solutions (CSS) Manual provides guidance and demonstrates how Context Sensitive concepts and principles may be applied in roadway improvement projects. Context Sensitive Solutions look beyond the pavement of a street and design transportation facilities that are consistent with their physical settings and intended land use. By considering the total context within which a transportation improvement project will exist the CSS Manual helps to preserve and enhance scenic, aesthetic and the historic character of our community. Additionally, it improves the safety, mobility and infrastructure conditions of a community.

The identified solutions were a joint effort of the Institute of Transportation Engineers, the Congress of New Urbanism, the Federal Highway Administration and the Environmental Protection Agency. The adoption of this manual as an attachment to our Thoroughfare Plan will provide the following:

- Specific guidance on thoroughfare cross-section and intersection design
- Methods for integrating the principles of CSS in urban roadway improvement projects

Leah Avenue Extension

Currently the Transportation Master Plan identifies Leah Avenue as a major arterial road extending from Wonder World Drive to Clovis Barker Road. The recommended update to the Master Plan is proposing that Leah Avenue be extended from Clovis Barker to McCarty Lane. Staff is recommending the extension of Leah Avenue for the following reasons:

- The proposed extension will provide a north/south thoroughfare for the eastern portion of the community and therefore provide for additional connectivity in the area.
- The proposed extension will provide direct emergency access from the Hotel/Conference Center to the hospital.
- The proposed extension of a major arterial supports the future land use designation of commercial and industrial for the properties adjacent to the proposed extension.
- Supports the following goals and policy statements of the Horizons Master Plan:
 - Goal 1- Improve the overall mobility of citizens in the community, as well as thru-travel, across-town travel, by implementing a well-coordinated major thoroughfare plan which moves people and goods in a safe, expeditious, economical and environmentally sensitive manner.
 - Policy LU-1.5- The City shall encourage development to occur in the “preferred growth corridors”. The two “preferred growth corridors” include southeast San Marcos bounded by Hunter Road on the north and State Highway 123 on the east and northeast San Marcos bounded by IH-35 on the west and State Highway 80 on the south.
 - Policy T-1.2- The City shall acquire rights-of-way for future arterials as shown on the adopted Thoroughfare Plan in advance of development in order to save public money to insure that arterials can be located as planned.

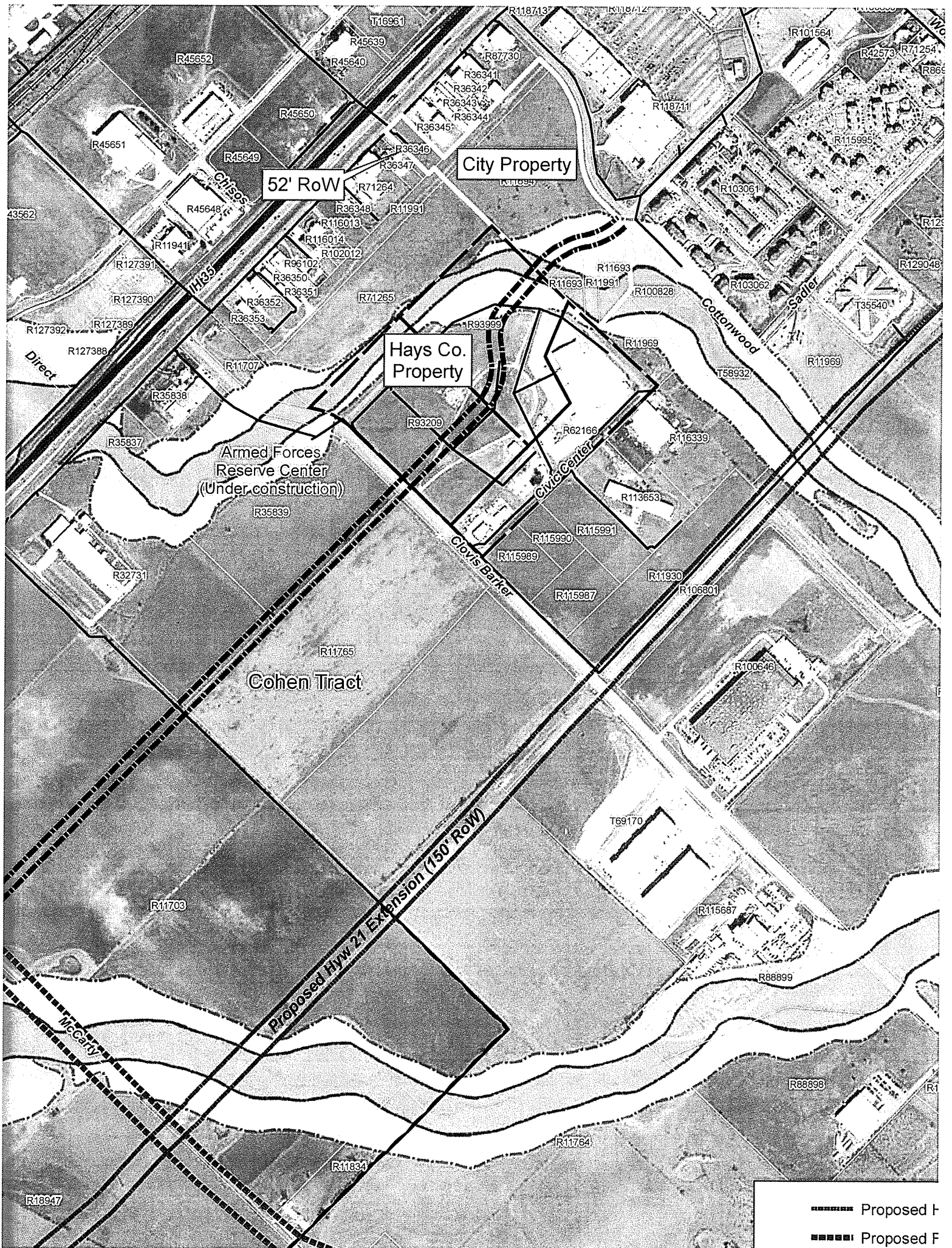
Loop 110

Loop 110 is a proposed future loop that would be a 4-lane divided roadway and would be utilized as a western outer loop from North IH-35 to South IH-35. The portion of the loop seeking to be removed is the portion extending from IH-35 to the terminus of McCarty Lane. This portion of Loop 110 will instead be routed to the existing McCarty Lane, an existing major arterial road.

Recommendation

The above amendments are consistent with the policies of both the Transportation Master Plan and the Horizons Master Plan. Furthermore, the amendment promotes the orderly and efficient growth and development of the community and furthers the public health, safety and general welfare of the City. Finally, the extension of Leah Avenue and the inclusion of the ITE Context Sensitive Solutions Manual appear to support the following City Council goals:

- Enhance region's transportation grid
- Support Environmental Protection and Smart Growth



Context Sensitive Solutions in Designing Major Urban Thoroughfares for Walkable Communities



A continuing challenge in planning and designing thoroughfares in urban areas is balancing the interests of travelers and community stakeholders. One group may focus on travel time and speed; other interests may be concerned with the character of the community. When freight carriers, emergency service providers, local business people, transit operators and other parties are brought into the picture, it becomes even more complex. In cities and town centers, resolving these multiple demands can be even more difficult because the wide range of objectives for the thoroughfare often is coupled with limited opportunity to expand or alter the public right-of-way.

The publication provides a resource for practitioners working in the challenging practice of urban thoroughfare design. The principles are based on the evolving practice of context sensitive solutions (CSS), which integrates CSS principles into existing processes to facilitate informed decision-making that considers the needs, interests and constraints within a project. CSS provides a foundation for planning and design in urban areas by emphasizing a collaborative and multidisciplinary approach, coupled with an emphasis on the flexible application of design guidance. Use of CSS principles should begin in long-range transportation and land use planning processes, and continue throughout the entire project development process.



Figure 1 An urban avenue in Denver, CO.

In the publication, the principles of CSS underlie design guidance that draws upon the philosophies and practices of smart growth and new urbanism. These movements emphasize the importance of creating multimodal transportation systems with an emphasis on walkability. The focus is on major urban thoroughfares. "Major" refers to facilities that function as collectors and arterials. "Urban" refers to environments where development intensity, mix of land uses and design features combine to create opportunities for walking, transit and biking to be efficient and attractive transportation choices.

The publication includes design principles and guidelines that practitioners can use to develop context-sensitive plans and designs for major urban thoroughfares.

Overview

The CSS publication was developed to provide planners and designers with guidance and information for using flexibility in existing American Association of State Highway and Transportation Officials (AASHTO) policy and information for context sensitive solutions (CSS) in design of major urban thoroughfares (arterials and collectors). The report was a joint effort between the Institute of Transportation Engineers and the Congress for the New Urbanism, sponsored by the Federal Highway Administration and the Environmental Protection Agency.

The publication describes:

- The importance of integrating the principles of CSS in urban roadway improvement projects,
- How CSS principles can be used in the transportation planning and project development processes, and
- Specific guidance on thoroughfare cross-section and intersection design.

The publication, published as an ITE Proposed Recommended Practice to supplement existing AASHTO policies and information, provides the user community an opportunity to use the new guidance and information, then to provide suggestions for improvements to be incorporated into the final ITE recommended practice.

The publication also addresses:

- The relationships and tradeoffs involved in balancing mobility needs, adjoining land uses, environment and community interests;
- Approaches to resolving the challenges encountered on an individual thoroughfare by addressing the larger scale of the network or the corridor;
- Guidance to identify and select thoroughfare types and design parameters to best meet the needs of a particular context; and
- Design criteria for roadway elements.



Figure 2 The roadside supports many urban activities.



Figure 3 An urban boulevard in Berkeley, CA.

Intended Audience

The publication is for practitioners involved in the planning and design of major urban thoroughfares for walkable communities, including traffic and civil engineers, transportation planners, land use planners, urban designers, landscape architects and agency representatives. It also may be useful to those involved in community leadership and advisory roles.

What are Context-Sensitive Solutions?

CSS provides solutions to transportation problems, issues and challenges reached through a process that balances the competing needs of diverse stakeholders starting in the earliest stages of project development. CSS is also flexibility in the application of design controls, guidelines and standards to design a facility that is safe and useful for all users regardless of the mode of travel they choose. CSS is based on a common set of tenets:

- Balance safety, mobility, community and environmental goals in all projects;
- Involve the public and stakeholders early and continuously;
- Use an interdisciplinary design team tailored to project needs;
- Address all modes of travel;
- Apply flexibility inherent in design standards and guidelines; and
- Incorporate aesthetics as an integral part of good design.

Characteristics of Walkable Communities

The publication applies CSS principles in urban areas to support and promote the following characteristics:

- Mixed land uses in close proximity;
- Building entries fronting the street;
- Pedestrian-scale building, landscape and thoroughfare design;
- Compact developments;
- Highly connected circulation network; and
- Public spaces that contribute to "placemaking."

How CSS Differs from the Conventional Design Process

Fundamental differences in approaches to design can result in different outcomes. Conventional thoroughfare design is frequently driven by traffic demand and level of service objectives. CSS principles applied to a thoroughfare design process address critical factors and issues before establishing design criteria. CSS considers all community objectives resulting

in a well thought-out and rationalized design tradeoff—the fundamental basis of CSS. This broader focus can expedite projects by making the design compatible with its surroundings while addressing community concerns.

A New Framework for Urban Thoroughfare Design

The publication introduces a design framework based on the concept of context zones and a set of thoroughfare types consistent with characteristics of urban areas. Context zones are used to categorize urban contexts into discrete ranges of density and intensity of development. Thoroughfare types supplement functional classifications to provide more definition for thoroughfare designs. The design of the thoroughfare itself helps to define context as much as adjacent buildings define context, and thoroughfare design may change as context changes.

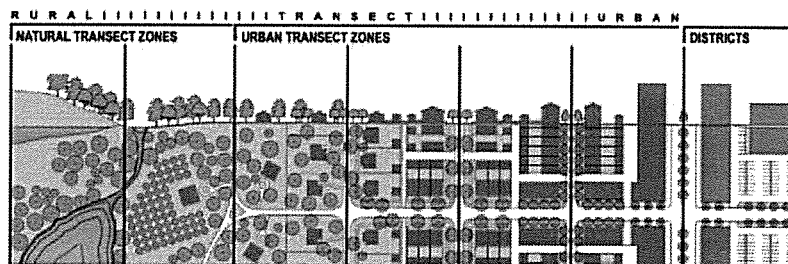


Figure 4 The CSS framework uses the concept of "context zones" to categorize urban contexts. Source: Duany Plater-Zyberk and Company.

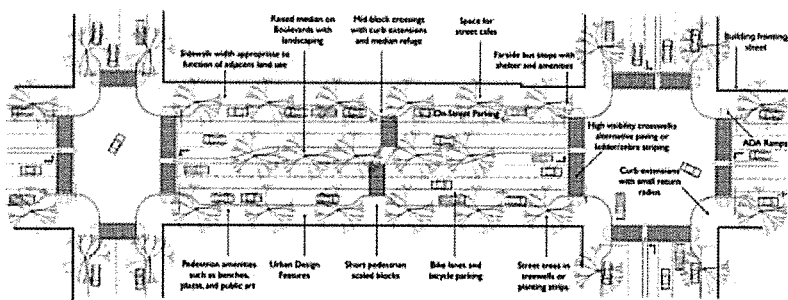


Figure 5 This report provides design guidance for the roadside, traveled way, and intersections. Source: Community Design + Architecture Inc.

Contents of the Report

The publication provides guidance on planning and design based on thoroughfares comprising four components: context, roadside, traveled way and intersections. The report's chapters are organized into three parts:

Part 1, Introduction: Foundation and background, principles of CSS, definitions and overview of CSS.

Part 2, Planning: CSS in transportation planning and project development processes, CSS in network and corridor planning, design framework, context zones, thoroughfare types and general design parameters.

Part 3, Design: Thoroughfare type design parameters; design in constrained rights-of-way; flexibility in design criteria; example thoroughfare designs; design controls, features and guidelines for roadside, traveled way and intersection design; and guidance for mobility priority thoroughfares.

Contact: Institute of Transportation Engineers, Philip Caruso or Lisa Fontana Tierney, 1099 14th Street, NW, Suite 300 West, Washington, DC, 20005. Phone: 202-289-0222; Fax: 202-289-7722; www.ite.org.

Publication sponsored by: Federal Highway Administration, Environmental Protection Agency
Additional fact sheets are available.

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
July 13, 2010**

1. Present

Commissioners:

Sherwood Bishop, Chair
Bill Taylor, Vice-Chair
Randy Bryan
Jude Prather
Curtis O. Seebeck
Jim Stark
Chris Wood
Travis Kelsey

City Staff:

Chuck Swallow, Development Services Director
Matthew Lewis, Development Services Assistant Director
Francis Serna, Recording Secretary
John Foreman, Planner
Abigail Gillfillan, Planner

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Bishop at 6:00 p.m. on Tuesday July 13, 2010 in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Bishop welcomed the audience. Chair Bishop announced that staff reported that the SmartCode will only include downtown and exclude the neighborhoods until staff has met with Neighborhood groups.

4. NOTE: *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session;*

5. Citizen Comment Period

Jean Baggett, 726 W. Hopkins, stated she has lived in San Marcos for almost two years and has been before the Commission twice. She felt that was too many. Ms. Baggett asked the Commission to place a moratorium on zone changes in the residential areas on San Marcos. She pointed out that she has attended Planning and Zoning Commission and City Council meeting and said it is horrible to go to the meetings and listen to the people of San Marcos speak concerning the proposed changes to the residential areas. Ms. Baggett stated that she feels bad for the folks that are speaking because they don't know what to do. Once again she asked the Planning and Zoning Commission to place a moratorium on zoning changes in neighborhoods of

San Marcos. Ms. Baggett asked the Commission to listen to the citizen stories with their hearts because the citizens are the fiber of San Marcos.

Grace Neal, 128 S. Endicott, addressed the problems and cost incurred when she was trying to build her house on her lot. She asked the Commission to consider the established Dunbar neighborhood and consider how they address building in existing areas with careful review. She pointed out that the LDC and SmartCode are designed for "new" development and have no flexibility in considering current built out neighborhoods. Ms. Neal asked the Commission to slow down the code approval process and consider individual community input to ensure the existing areas continue to be fairly handled.

6. CUP-10-15. Hold a public hearing and consider possible action on a request by Cinema Grill, Inc for a Conditional Use Permit to allow on premise consumption of beer and wine at 321 N LBJ DR.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Prather and a second by Commissioner Kelsey, the Commission voted all in favor to approve CUP-10-15 with the conditions that the CUP shall be valid for an initial approval period of one (1) year, provided standards are met, subject to the point system and the applicant shall submit all required plans and receive all necessary permits from the Health Department. The motion carried unanimously.

7. PC-10-07(01). Consider possible action on a request by Byrn & Associates, Inc., on behalf of 90 San Marcos, Ltd., for approval of the concept plat of 90 San Marcos Property, being 88.2 acres, more or less, in the J.M. Veramendi Survey No. 2, Abstract No. 17, located in the 1800 & 1900 Block of North IH-35.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Prather, the Commission all in favor to approve PC-10-07(01) with the conditions that a dedicated left-turn bay be added of sufficient length to accommodate left-turn movements at the intersection of Mill Street and Copper Beech Street and review of a Traffic Impact Analysis (TIA) be complete and approved for the entire Concept Plan. The motion carried unanimously.

8. QWPP2-10-0002. Consider possible action on a request by Byrn & Associates, Inc., on behalf of Joe K. Dobie, Jr. for a Qualified Watershed Protection Plan Phase II for Lot 1, Joe Dobie Addition, located on the southwest corner of Aquarena Springs Drive and River Road.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Wood, the Commission voted all in favor to approve QWPP2-10-0002 as submitted. The motion carried unanimously.

9. PC-10-08(03). Consider possible action on a request by Byrn & Associates, Inc., on behalf of Joe K. Dobie, Jr., for approval of the final plat of Lot 1, Joe Dobie Addition, located on the southwest corner of Aquarena Springs Drive and River Road.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Prather, the Commission voted all in favor to approve PC-10-08(03) as submitted. The motion carried unanimously.

10. LUA-10-01. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Future Land Use Map Amendment from High Density Residential (HDR) to Medium Density Residential (MDR) on a 1.35 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located at 400 Briar Meadow Road.

11. ZC-10-04. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Zoning Change from unzoned to Multi-Family (MF-12) on a 1.35 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located at 400 Briar Meadow Road.

Chair Bishop opened the public hearing for LUA-10-01 and ZC-10-04. David Williamson representing Breckenridge stated he was available to answer questions. There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve LUA-10-01. The motion carried unanimously.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve ZC-10-04. The motion carried unanimously.

12. LUA-10-02. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Future Land Use Map Amendment from High Density Residential (HDR) to Medium Density Residential (MDR) on a 4.53 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located at 201 Briar Meadow Road.

13. ZC-10-05. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Zoning Change from unzoned to Multi-Family (MF-12) on a 4.53 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located at 201 Briar Meadow Road.

Chair Bishop opened the public hearing for LUA-10-02 and ZC-10-05. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve LUA-10-02. The motion carried unanimously.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve ZC-10-05. The motion carried unanimously.

14. LUA-10-03. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Future Land Use Map Amendment from Industrial (I) to Medium Density Residential (MDR) on a 5.85 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located on the southeast corner of Briar Meadow Road and the Missouri Pacific R. R.

15. ZC-10-06. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Zoning Change from Light Industrial (LI) to Multi-Family (MF-12) on a 5.85 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located on the southeast corner of Briar Meadow Road and the Missouri Pacific R. R.

Chair Bishop opened the public hearing for LUA-10-03 and ZC-10-06. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve LUA-10-03. The motion carried unanimously

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve ZC-10-06. The motion carried unanimously

16. LUA-10-04. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Future Land Use Map Amendment from Commercial (C) to Medium Density Residential (MDR) on a 9.90 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located approximately 600 feet west of IH-35 and 200 feet north of Mill Street extension.

17. ZC-10-07. Hold a public hearing and consider possible action on a request by Breckenridge Properties for a Zoning Change from General Commercial (GC) to Multi-Family (MF-12) on a 9.90 acre parcel out of the J.M. Veramendi Survey No. 2, Abstract No. 17, located approximately 600 feet west of IH-35 and 200 feet north of Mill Street extension.

Chair Bishop opened the public hearing for LUA-10-04 and ZC-10-07. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve LUA-10-04. The motion carried unanimously

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Taylor, the Commission voted all in favor to approve ZC-10-07. The motion carried unanimously

18. LUA-10-05. Hold a public hearing and consider possible action on a request by Hammond Jones Development on behalf of Everette and Donna Swinney for a Land Use Map Amendment for 2.0199 acres of land described as Park Addition lots 36, 37, 38, 54, 57, 59 from Low Density residential to High Density Residential located at 218 Sessom Drive.

19. ZC-10-08. Hold a public hearing and consider possible action on a request by Hammond Jones Development on behalf of Everette and Donna Swinney for a Zoning Change for 2.0199 acres of land described as Park Addition lots 36,37,38,54,57,58 from Single Family Residential – 6 (SF-6) to Multi-Family Residential – 24 (MF-24) located at 218 Sessom Dr.

20. LUA-10-06. Hold a public hearing and consider possible action on a request by Hammond Jones Development on behalf of the Estate of Helen Van Gundy for a Land use Map Amendment for 3.078 acres of land described as Park Addition lots 55, 56, 52, 53, 41, 50-51 & pt of 42,43,44 from Low Density Residential to High Density Residential

21. ZC-10-09. Hold a public hearing and consider possible action on a request by Hammond Jones Development on behalf of the Estate of Helen Van Gundy for a Zoning Change for 3.078 acres of land described as Park Addition lots 55, 56, 52, 53, 41, 50-51 & pt of 42,43,44 from Single Family Residential – 6 (SF-6) to Multi-Family Residential – 24 (MF-24).

22. LUA-10-07. Hold a public hearing and consider possible action on a request by Hammond Jones Development on behalf of Christian Espiritu for a Land Use Map Amendment for 1.19 acres of land described as Park Addition lots 39, 40 from Low Density Residential to High Density Residential located at 300 Loquat St.

23. ZC-10-10. Hold a public hearing and consider possible action on a request by Hammond Jones Development on behalf of Christian Espiritu for a Zoning Change for 1.19 acres of land described as Park Addition lots 39, 40 from Single Family Residential – 6 (SF-6) to Multi-Family Residential – 24 (MF-24) located at 300 Loquat St.

Chair Bishop opened the public hearing for LUA-10-05, ZC-10-08, LUA-10-06, ZC-10-09, LUA-10-07, and ZC-10-10.

Robert Moseley, 123 Canyon Road, pointed out problems with the notification map stating that there is no information on the map indicating the scope of the apartments. He also indicated that several streets indicated on the map do not exist as portrayed on the notification map. Mr. Moseley stated that the proposed use will decrease property values. There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Seebeck, the Commission voted all in favor to postpone LUA-10-05, ZC-10-08, LUA-10-06, ZC-10-09, LUA-10-07 and ZC-10-10 for six months. The motion carried unanimously.

24. Classifying an Unlisted Use- Gaming Facilities. Hold a public hearing and consider possible action on an appeal by Molly Harris of the Planning Directors interpretation that the proposed gaming facilities are not similar enough to any use currently defined in the Land Use Matrix Section 4.3.1.2

Chair Bishop opened the public hearing. Molly Harris, 191 Harton Cove, Buda Texas explained that her concern is that since May she has been going round and round regarding whether or not her business is similar enough to existing businesses. Ms. Harris explained that her business is a charitable sweepstakes business which is being compared to indoor amusement services and pointed out related services from the staff report. There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Seebeck, the Commission voted three (3) for and five (5) opposed that the proposed use is similar enough to Amusement Services or Amusement Devices/Arcade and should be treated the same. The motion failed. Commissioners Kelsey, Stark, Bryan, Bishop and Wood opposed.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Bryan, the Commission voted three (3) for and five (5) opposed that the proposed use is not similar enough to any existing categories and should not be allowed. The motion failed. Commissioners Prather, Taylor, Seebeck, Bishop and Wood opposed.

MOTION: Upon a motion to amend the motion was made by Commissioner Kelsey and a second by Commissioner Seebeck, the Commission voted seven (7) for and one (1) opposed that the main motion include that recommendations from staff be brought back to the Commission at the July 27, 2010 Planning Commission meeting. The motion carried. Commissioner Stark opposed the amendment.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Prather, the Commission voted seven (7) for and one (1) opposed that the proposed use is not similar enough to any existing categories and a new classification should be added to the matrix and that recommendations from staff should be brought back to the Commission at the July 27, 2010 Planning Commission meeting. The motion carried. Commissioner Stark opposed.

25. Discussion Items.

Commission members and staff may discuss and report on items related to the Commission's general duties and responsibilities. The Commission may not take any vote or other action on any item other than to obtain a consensus regarding items that will be placed on future agendas for formal action.

Commissioner Seebeck announced that Matthew Lewis, Assistant Director of Development Services is a San Marcos resident.

Planning Report

Matthew Lewis invited the Commission to the SmartCode Workshop that will be held on Wednesday, July 21, 2010 at 6:00 p.m. at the San Marcos Activity Center.

Commissioners' Report

Chair Bishop reported that there will be several items on the July 27, 2010 Planning Commission agenda. He thanked staff for their dedication.

26. Consider approval of the minutes from the Regular Meeting of June 22, 2010.

MOTION: Upon a motion made by Commissioner Prather and a second by Commissioner Bryan, the Commission voted all in favor to approve the minutes from the Regular Meeting of June 22 2010. The motion carried unanimously.

27. Questions and answers from the Press and Public.

Dan West, member of the Local Veteran Foreign War Post and Chairman of the Veterans Advisory Committee for San Marcos stated that he understood that the VFW Sweepstakes was being questioned. Mr. West advised he was available to answer any questions.

28. Adjournment

Chair Bishop adjourned the Planning and Zoning Commission at 8:09 p.m. on Tuesday, July 13, 2010.

Sherwood Bishop, Chair

Bill Taylor, Commissioner

Jim Stark, Commissioner

Jude Prather, Commissioner

Chris Wood, Commissioner

Curtis Seebeck, Commissioner

Randy Bryan, Commissioner

Travis Kelsey, Commissioner

ATTEST:

Francis Serna, Recording Secretary